

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

Docket No. 09-427

6 ALEXIS CANDELARIO SANTANA, and
7 DAVID OQUENDO RIVAS,

San Juan, Puerto Rico
February 21, 2013

8 Defendants.

9
10 JURY TRIAL

11 BEFORE THE HONORABLE JUDGE JOSÉ A. FUSTÉ,

12 UNITED STATES DISTRICT JUDGE.
13

14 APPEARANCES:

15 For the Government:

Mr. Bruce Hegyi, AUSA
Ms. Maria Dominguez Victoriano, AUSA
Ms. Marcela Mateo, AUSA

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18 For the Defendants:

Mr. David Arthur Ruhnke, PHV
Mr. Francisco Rebollo Casalduc, Esq.
Mr. Jose R. Aguayo, Esq.

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CAT.

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San Juan, Puerto Rico

February 21, 2013

At or about 9:01 AM

* * *

THE COURT: Please be seated.

Let me discuss a couple things with you first before we bring the jury panel in. About the lectern, the lectern cannot be turned, because under that lectern, you have a box of wires that is wide. It's a square as big as the lectern. We have tried that before, and what we have done is screw up the cables.

It has happened before, and the last time it happened it took me three days to get them fixed, because they had to dismantle the whole thing and find the cables. So I'm not going to take any chances with that.

When the case is actually proceeding, it's easy, because you are in the lectern and you are basically facing the witness stand. So that's easier. There is no big deal with that.

As to the opening statements and closing arguments, what we can do is use the microphone, the portable. And I would prefer that you stay in the area of the lectern.

When you have to give a paper to the witness, you don't have to be asking permission, can I approach, because any kind of normal, expected approach is okay, you know. We

1 don't have to get permission for that. That rule usually is
2 implemented for lawyers who are aggressive and they come
3 running to the witness and things of the sort. We don't have
4 that here, so there's no issue.

5 The other thing I would like to do is to tell you
6 that I personally don't like -- the same way that in the
7 instructions you proposed, if you find a juror in the hallway,
8 whatever, you have to stay away, which is normal, of course.
9 It's not only to protect the jury integrity but to protect the
10 case more than anything else.

11 I would prefer that when we are dealing in court,
12 that we just -- I don't like this Puerto Rican thing of
13 getting up and saying good morning, members of the jury, good
14 morning, Judge. It sounds as if you are going to have coffee
15 or something. I don't like that. It's better to say if
16 you're going to come to the podium, to say, members of the
17 jury, may it please the Court.

18 You don't have to call me Your Honor. Call me Judge.
19 Call me Jose. Call me whatever. I don't care about me, see?
20 But I want to keep these things flowing in a way that is
21 extremely respectful and formal, especially because of the
22 kind of case. That's all I'm asking.

23 The use of the microphones is extremely important. I
24 was asking this morning when I arrived early with Mr. Ruhnke
25 and your assistant, whose name is -- I'm sorry.

1 MR. RUHNKE: Howe, Dr. Julie Howe.

2 THE COURT: That the microphone system is extremely
3 good, but how you hear the sound in this courtroom is these
4 little speakers you hear now. There are no speakers in the
5 ceiling operational now, because they put in a new system and
6 these are the speakers.

7 You see there is one in the witness stand. There is
8 one next to the court reporter. And every two or three seats
9 there is one on the wall in the jury box. This is -- I love
10 the other system we had before, which the sound would come
11 from the ceiling and it would be a lot easier to hear. This
12 requires -- the sound is not the same, and it requires
13 adjusting the volume in each one of the speakers as you go
14 along. And that's a real pain sometimes.

15 That's why we have to keep ourselves close to the
16 microphones, so that everything can be understood.
17 Especially, especially when we have a jury that is mainly
18 Spanish speaking obviously. I'm mainly Spanish speaking, too,
19 myself. My English is a second language. There is no
20 question about it. And sometimes when you have stateside
21 attorneys, it is extremely important that every word is
22 understood.

23 And for that reason, for that reason, I'm going to
24 beg you to be very conscious of the use of the microphone. If
25 it sounds loud, don't worry about it. We are loud people here

1 in Puerto Rico, so don't worry about it. If it sounds loud,
2 don't worry about it. That's a Latin thing. It's loud. It's
3 okay.

4 I know, I've tried cases in the states, and people
5 are more soft spoken and whisper in the courtroom. That's
6 fine. You have to speak louder here, because that's the way
7 we deal with things.

8 We are going to bring the jury now. We have them in
9 numerical order, as we promised. And then we are going to do
10 the strikes. After we do the first 20 and 20, we have some
11 extras, and I'll figure out how to divide them. It's five and
12 three I remember. Correct?

13 MR. HEGYI: Yes.

14 MR. RUHNKE: Yes.

15 THE COURT: So let me see. If it's five and three,
16 we could actually do one by one, and then we could do two and
17 one, two and one, and one and one. We can do that, and even
18 it out. Then the alternates of course are going to be done in
19 the usual manner, one and one.

20 What else? Once we do that, we're going to swear
21 them in, and we will proceed.

22 MR. AGUAYO: Your Honor, may I say something?

23 THE COURT: Questions. This is the moment for
24 questions, Mr. Aguayo.

25 MR. AGUAYO: First I want to tell the Court I'm

1 sitting here because when we do the peremptories --

2 THE COURT: I don't care. That's fine. I would not
3 expect you to be facing me when you participate in jury
4 selection. You can turn around and do whatever you have to
5 do. I don't care about that.

6 MR. AGUAYO: The other thing, Your Honor,
7 concerned -- can you hear me, sir? Yes? I'm having concerns
8 in regards to the discovery.

9 THE COURT: Why?

10 MR. AGUAYO: Well, yesterday, while we were preparing
11 for today, I get a call or an e-mail approximately 4:00, 4:30
12 in the afternoon advising me that there's more discovery. As
13 you can obviously think, Your Honor, you know, I'm working on
14 something, and then I have to go get discovery. It's about --
15 as I understood it, it was about 40 items. I sent my
16 secretary to get them, because I wasn't going to leave the
17 office.

18 We have to go through all that. And this morning
19 again they give us another disc of discovery. In that
20 discovery of yesterday, it turns out there's another
21 government witness against Mr. Alexis Candelario and Mr. David
22 Oquendo. The point being, I think the Court was very clear
23 that 72 hours prior to trial this information had to be in our
24 hands.

25 Now the Government is saying, well, this is not

1 | really Jencks, because the witness did not write this report.
2 | However, my understanding was, and in fact the government did
3 | give us 72 hours before the unredacted 302s, and to use that
4 | excuse now I think, you know, kind of stretches --

5 | THE COURT: Well, let me ask. There must be a
6 | reason. There could be many reasons. Could be they're
7 | playing around with you or there's a reason. They gave you a
8 | reason for that?

9 | MR. AGUAYO: Well, this particular 302, the interview
10 | was in December of --

11 | THE COURT: Does it pertain to the first witness?

12 | MR. AGUAYO: It doesn't pertain to the first witness,
13 | Your Honor. But my point is that this is a lot of documents,
14 | not only this thing, but other things that are on the
15 | discovery disc. It's a lot of documents to review.

16 | We're obviously in trial all day. When we leave
17 | here, they're going to give us the witness list, so we have to
18 | prepare for the next day.

19 | THE COURT: But you know, you know that in real cases
20 | in all courts sometimes when somebody's reviewing paperwork
21 | and preparing, things are found that for whatever reason,
22 | perhaps omission, or good faith omission, doesn't necessarily
23 | have to be anything wrong, they find something and they
24 | immediately do it.

25 | If it's proven that they had it and that it was right

1 | there in front of their face for 20 days and they wait until
2 | the last moment, that's one thing. But I need to hear,
3 | because it's extremely possible that sometimes, when you are
4 | reviewing and making certain that you have complied, you
5 | discover new things or find something. My God, I didn't give
6 | this.

7 | MR. AGUAYO: I understand, Your Honor.

8 | THE COURT: So we have to play that around. I'm not
9 | going to exclude that. I have to know what the reason was.
10 | Let me hear.

11 | MR. REBOLLO: May I, Your Honor?

12 | THE COURT: Yes.

13 | MR. REBOLLO: Judge, I hear what you're saying, and I
14 | agree, but the problem we're having is the discovery we got
15 | this morning particularly, there is yet to be seen an amount
16 | of Jencks that was provided today, at least that's what the --
17 | that's what the cover letter states. It's a couple hundred
18 | pages of Jencks. And our problem is we're going to open
19 | without having reviewed that Jencks.

20 | And what we request is 45 minutes to an hour to be
21 | able to review it. It's not -- Judge, it's not our fault. We
22 | just got it this morning.

23 | THE COURT: Wait a minute. Wait a minute. Let me
24 | hear the other side first, because I am going to resolve this
25 | amicably.

1 Mr. Hegyi, what is the reason for this barrage of
2 papers at the last minute?

3 MR. HEGYI: It is what Your Honor is saying. When
4 the Government was going through its stuff for preparation for
5 trial and to make sure everything was out, we realized that
6 the FBI had never reduced to writing a 302 for this one
7 individual. And so a request was specifically made to the FBI
8 to prepare a 302. It didn't exist. And we asked them to
9 prepare it. It was delivered to us yesterday. We provided it
10 to the defense yesterday.

11 THE COURT: I see.

12 MR. HEGYI: And with regard to the --

13 THE COURT: Were you aware of those papers before
14 yesterday?

15 MR. HEGYI: What papers?

16 THE COURT: The papers that were disclosed. When did
17 you become aware that they were -- the material that had to be
18 turned over.

19 MR. HEGYI: Okay. I was not involved directly in
20 that.

21 THE COURT: Who was? Who was?

22 MS. MATEO: The other material that was provided was
23 also provided to us yesterday. So right away is when we
24 provided it to defense.

25 THE COURT: Okay. Let me say this. Remember that

1 opening statements under the definition is an outline or
2 summary of the nature of the case, sometimes anticipated
3 proof, not necessarily, presented by an attorney to the jury
4 at the start of the proceeding. The purpose is to give
5 general advice to the jury on issues involved and to give the
6 jury a general idea as to what may be the factual situations
7 that the jury may be facing so that they can understand better
8 the evidence.

9 No opening statement will contain, will contain a
10 complete recital of the facts and will not discuss the
11 testimony of every particular witness, because doing that,
12 doing that, he or she that does that is trapping him or
13 herself into a corner, because you never know what the
14 evidence is going to come out or how is it going to come out.

15 So I just don't see the prejudice. We're going to
16 start the case, and this is it. Simple as that.

17 MR. AGUAYO: Your Honor, I have one more request, and
18 again it's with regard to opening statements. And I don't
19 want hopefully any objections to my opening statement.

20 THE COURT: It's simple. If you don't want any
21 objections, don't do anything wrong in the opening
22 statement.

23 MR. AGUAYO: Precisely. This is why I'm asking this
24 now. Throughout the qualification of the jurors, it's been
25 mentioned that Alexis Candelario is eligible for the death

1 penalty, or has been certified for the death penalty, whereas
2 David Oquendo has not. However, to the jurors that were being
3 qualified, it was mentioned it's going to be death or life.

4 THE COURT: Yes.

5 MR. AGUAYO: My client is looking at life now. I
6 know normally, normal cases that are not presented with this
7 situation of a death eligible candidate and a non-death
8 eligible candidate I would not be allowed to talk about
9 possible sentences. But since the jurors heard death or life,
10 I would like to bring out that this case is equally important
11 to my client, because he's looking at life.

12 And I would like your comments on that, if I would be
13 allowed to say so.

14 THE COURT: Yes?

15 MR. HEGYI: Your Honor, here's our concern. The jury
16 is not supposed to even worry about the sentence. His
17 sentence will be up to Your Honor.

18 THE COURT: The best way for me to do this is
19 reinstating to the jury, as part of the preliminary charge,
20 how is the case standing? The case is the case. We're going
21 to do the guilt phase now. That, as to your client, is a
22 regular felony case, regular felony case.

23 MR. AGUAYO: Yes.

24 THE COURT: And as to the other gentleman, there may
25 be a second phase, which you have told the jury basically

1 during the thing. And that's it. And then we'll take it from
2 there. I don't think that you -- I don't know.

3 MR. AGUAYO: Well, as I said, my concern is, Your
4 Honor, that they obviously see the importance of this trial as
5 to Alexis Candelario, and as does he, that it's death or life.
6 And I want to bring up this is equally important to my client,
7 because he's looking at life.

8 THE COURT: Well, it may be life. What if he's not
9 convicted of some of the mandatory life charges? Is there
10 anything there manditorily not life?

11 MR. AGUAYO: Well, from the way I've seen this thing,
12 it looks like we're talking --

13 THE COURT: All of them are?

14 MR. AGUAYO: Yes.

15 THE COURT: Well, let me try. I think I can be good
16 at that. I can actually restate to the jury the fact that
17 there is a difference between the case of one and the case of
18 the other, see?

19 MR. AGUAYO: But mentioning that even though Alexis
20 Oquendo (sic) is looking at death or life, he's looking at
21 life.

22 MS. MATEO: No, it can't be.

23 MR. HEGYI: Your Honor.

24 MR. AGUAYO: That's what we've been talking about.

25 MR. HEGYI: That's where we have a problem.

1 THE COURT: One at a time.

2 MR. HEGYI: The jury's not supposed to consider
3 punishment. The only person they're supposed to consider
4 punishment is against Mr. Candelario Santana.

5 THE COURT: But there is a reality. During the jury
6 selection we have been discussing very serious punishments.
7 Nobody ever mentioned as to this gentleman, Mr. Oquendo,
8 nobody ever said life.

9 MR. HEGYI: And it isn't --

10 THE COURT: Nobody said it. And we were
11 concentrating basically as to Mr. Candelario.

12 MR. HEGYI: Uh-huh.

13 THE COURT: Now, let me -- let me figure a way to
14 deal with this. And I'll try to figure out a way in which I
15 can stress that there is a difference, and that at this stage,
16 they should not be concerned with penalties either, because
17 the truth of the matter is that is what the instructions ask
18 you to do in the context of the guilt phase.

19 MR. HEGYI: And, Your Honor, that's what we would
20 propose.

21 THE COURT: Right.

22 MR. HEGYI: You indicate Mr. Candelario has death or
23 life. Don't worry about Mr. Oquendo. He's not facing the
24 death penalty, and his punishment should be reserved for the
25 Court.

1 THE COURT: Not only that, in his case, I don't know
2 what he's going to get convicted of, if anything, and his
3 Presentence Report may suggest something that may be different
4 from life. I don't know. So why should we label him a life,
5 life, for sure? Maybe he is. And probably he will --

6 MR. AGUAYO: Yes.

7 THE COURT: But not necessarily so. Don't you think?

8 MR. AGUAYO: Well, can you say that --

9 THE COURT: Well --

10 MR. AGUAYO: -- it could be that?

11 THE COURT: Why don't you let me say what I think I
12 should say. And I'll try to be fair as to that. I'll try to
13 be, you know, balanced as to that.

14 MR. AGUAYO: That's why I wanted to anticipate
15 that.

16 THE COURT: But I don't think you should include that
17 in your opening. Let me deal with those issues. And believe
18 me, I'm going to be stressing throughout the trial certain
19 things that are extremely important.

20 MR. AGUAYO: Yes, Your Honor.

21 THE COURT: Because I want to do this right, and I
22 want everybody to feel that no matter what happens, this was
23 done right, as correct as we can do it as human beings.

24 MR. AGUAYO: All right.

25 MR. RUHNKE: A couple of minor things, Your Honor.

1 THE COURT: Yes.

2 MR. RUHNKE: We asked for four particular --

3 THE COURT: I'm going to give them.

4 MR. RUHNKE: That's fine. Thank you.

5 THE COURT: I'm going to give them. Of course I'm
6 going to give them.

7 Okay. So why don't we bring the panel in. This
8 gentleman who is in the blue shirt has to get out of there now
9 for the time being. Let's bring the panel in, and then we're
10 going to do some introductions, repeat -- is anybody else from
11 your office going to be here?

12 MR. HEGYI: Not for the jury selection, but as soon
13 as we're done, Ms. Dominguez will be here.

14 THE COURT: Okay. She's the only other Assistant
15 that's coming?

16 MR. HEGYI: That's the only other Assistant that's
17 coming.

18 Your Honor, may I ask one question? I know in this
19 jurisdiction Batson is not a big issue. In D.C. we always
20 were required to put down the race and gender of the person we
21 struck.

22 THE COURT: We don't do that here.

23 MR. HEGYI: Right. Understood.

24 THE COURT: The only issue that could happen here,
25 that could happen here is that, for example, you strike 20

1 women.

2 MR. HEGYI: Right.

3 THE COURT: Then we have to deal with that
4 situation.

5 MR. HEGYI: But we don't need to put down female or
6 male next to the strike? We can unscramble the egg, because
7 we'll know who it was.

8 THE COURT: No, I don't ask that you do that.

9 MR. HEGYI: Okay. Thank you, Your Honor.

10 THE COURT: And once again, those of you who are not
11 locals are not aware that sometimes in the context of Latin
12 culture sometimes women can be as hard or worse than men. Let
13 me tell you that.

14 MR. AGUAYO: Your Honor, lastly, I just want to
15 inform the Court I'll be presenting Victor Chico Luna.

16 THE COURT: Yes, of course. I want this jury to
17 fully respect each one of you as attorneys, and I want to live
18 with the understanding that this was a first class tried case.
19 That's all I want. And luckily, I'm sure that that will
20 happen.

21 (At 9:21 AM, jury panel entered the courtroom.)

22 THE COURT: You can turn your chairs around. I have
23 no problem with that at all. You have to actually be able to
24 see who is who. And if you want to put your chairs on this
25 other side for the time being, I don't care either, or get a

1 couple folding chairs and do that. I don't care.

2 Oh, I don't know if I have a coin in my pocket. If
3 not, somebody has to give me a coin. And who wants to be
4 heads and who wants to be tails? Or should I --

5 MR. RUHNKE: We'll be heads, Your Honor.

6 THE COURT: You'll be heads. Okay.

7 (Coin tossed by Judge.)

8 THE COURT: Tails.

9 Counsel, I'm going to try to see if I can adjust the
10 lights here so we can make better use of the board.

11 MR. REBOLLO: Okay.

12 THE COURT: Let me try. I don't promise anything.
13 That's as much as we can do.

14 Okay. So the lawyers can sit. We are ready to
15 start.

16 Members of the jury panel for this case, you are the
17 ones who were pre-qualified to be in this larger panel. And
18 out of this group, we're going to select a jury for this case,
19 12 regular jurors and four alternates.

20 The process works this way. The law provides for a
21 number of what we call peremptory challenges, which are
22 challenges that do not have to be explained to anybody. It's
23 just the lawyers doing them, because you have to reduce the
24 group from 77, I think we have here, to the number that we
25 need. And this is done by striking on a one to one basis on a

1 list.

2 You saw that the lawyers, some of them, are turning
3 their chairs around to be able to look at you. I don't mind
4 that they move around, because they don't have a photo.
5 Remember we have been doing this jury selection for days. We
6 started on January 28, actually. So this is the moment when
7 they have the questionnaire, the notes they made when they
8 interviewed you, and they have to put sometimes a face to the
9 questionnaire to be able to remember who you are basically.

10 So don't think that if they are staring at you or
11 something or looking around it's because they are being
12 disrespectful. That is not the issue. The issue is they have
13 to be very sure what they're going to do, and they want to
14 make certain for example if they are looking at juror 700,
15 juror 700 is a woman and not the man they thought. They have
16 to just figure that out.

17 So in that sense, I give them full liberty of
18 movement around. They can sit facing that way. They can sit
19 facing this way. Because what we do is they do this job
20 properly, and as expediently as possible.

21 We have -- you saw me toss a coin. The coin is to
22 decide who starts. And the Government starts basically. So
23 we're going to go one by one. The Government will make one
24 challenge, and you will pass the piece of paper to the other
25 table. They will make one challenge. It returns until we

1 have done the 20 and 20.

2 And after that, I already told you what we're going
3 to do with the rest, okay? So we're ready to start.

4 MR. RUHNKE: Yes.

5 MR. HEGYI: Yes, Your Honor.

6 THE COURT: So Ms. Villavicencio will give you the
7 official list. We're striking now for regular jurors,
8 basically.

9 THE COURT: Let me say one thing before we continue.
10 These lawyers are totally committed as a group to try a first
11 class case in every sense of the word. So it's extremely
12 important that you know that all of us together as a team of
13 professionals are really trying to do the right thing here.
14 Make it correctly, everything correctly, the proper way. So
15 in that sense we hope to give you the best of each one of you
16 under the circumstances.

17 Mr. Hegyi, you can start. Any question, ask Diana
18 how she wants them marked.

19 MR. RUHNKE: Your Honor, could we see you at side bar
20 a moment?

21 THE COURT: Sure.

22 (Bench conference held.)

23 THE COURT: So what is the deal?

24 MR. RUHNKE: I just noticed the Government exercised
25 a strike in the alternate pool, and I thought we were just

1 striking against --

2 THE COURT: We're going to strike now strictly until
3 -- now we're striking only for the --

4 MR. RUHNKE: Main panel.

5 THE COURT: -- the main panel.

6 MS. MATEO: There's no line on the list.

7 THE COURT: Once you have done your 20, 20, five and
8 three, we'll make a line, okay?

9 MR. RUHNKE: But the line has got to be 65, right?
10 68? The line is at 68?

11 MS. MATEO: That's the problem. We don't know.

12 MR. RUHNKE: There's only 68 strikes against the main
13 panel.

14 COURTROOM DEPUTY: You exercise all your strikes. I
15 will count 12 jurors. Then I will draw the red line, and
16 below that line you will select the alternates.

17 MR. REBOLLO: But if they exercise their strike very
18 low, like they did, now they're effectively striking the
19 alternates.

20 THE COURT: No, no, no, not necessarily. You can
21 start anywhere on the list.

22 MR. RUHNKE: All right. Fine. That was just a
23 ground rule issue. That's fine.

24 THE COURT: Once we have done the 20, 20, five and
25 three, then what remains in the list is the pool for

1 alternates.

2 MR. RUHNKE: Okay.

3 (Bench conference concluded.)

4 COURTROOM DEPUTY: Your Honor, the attorneys are done
5 with the first group of challenges. They are going to
6 exercise now the additional. With the first 20. They are
7 going to exercise now the additional.

8 THE COURT: They're going to start that now. Okay.

9 MR. RUHNKE: I understand that to be one, two, one,
10 two, one, one.

11 THE COURT: Right. Exactly.

12 MR. RUHNKE: Your Honor, can we just approach?

13 THE COURT: Sure. Bring the list when you finish.

14 (Bench conference held.)

15 MR. RUHNKE: We've now exercised all the strikes
16 against the main panel.

17 THE COURT: Uh-huh.

18 MR. RUHNKE: We'd like is to take about ten minutes
19 and look at what has happened to see if there are any things
20 we have a problem with. And I want to make this suggestion,
21 that we just send all these jurors back to the other
22 courtroom.

23 THE COURT: No, no.

24 MR. RUHNKE: And not bring them back. And not bring
25 them back here.

1 THE COURT: No. I'll give you the ten minutes, and
2 we'll stay here. I'll watch something on my iPad. I don't
3 want to move jurors around.

4 MR. RUHNKE: Okay.

5 THE COURT: I'll give you ten minutes.

6 MR. REBOLLO: Could we step out of the courtroom?

7 THE COURT: Of course you can step out of the
8 courtroom. It's fine with me.

9 MR. AGUAYO: Can we go to the attorney's lounge?

10 THE COURT: I'll give you the ten minutes. I'll stay
11 here. Diana, you're going to do the red line.

12 COURTROOM DEPUTY: Yes.

13 THE COURT: Make sure you're in agreement with her
14 how you're going to do the mechanics of this.

15 MR. RUHNKE: Yes.

16 THE COURT: You can leave the room. I'll stay here.
17 You can do whatever you want, okay?

18 (Bench conference concluded.)

19 (At 10:37 AM, defense attorneys left the courtroom.)

20 (At 10:41 AM, defense attorneys entered the
21 courtroom.)

22 THE COURT: All set?

23 MR. RUHNKE: We're all set, Your Honor. We can
24 proceed.

25 THE COURT: Very well. So we're going to proceed in

1 the same order, three each side, one and one.

2 COURTROOM DEPUTY: Below the red line.

3 THE COURT: Below the red line, of course.

4 As your numbers are called, please stand up.

5 Proceed to call the jury.

6 COURTROOM DEPUTY: Juror number four.

7 Juror number 193.

8 THE COURT: One nine three.

9 COURTROOM DEPUTY: Juror 252, two five two.

10 THE COURT: Wait. There is a -- check it out.

11 COURTROOM DEPUTY: 193.

12 It's two five two.

13 Juror number 297, two nine seven.

14 Juror number 352, three five two.

15 Juror number 356, three five six.

16 Juror number 360, three six zero.

17 Juror number 395, three nine five.

18 Juror number 553 -- 55 -- I'm sorry. 453. Juror

19 number 453.

20 Juror number 459, four five nine.

21 Juror number 482, four eight two.

22 Juror 491, four nine one.

23 And for alternates, juror number 583.

24 THE COURT: He's here in the back.

25 COURTROOM DEPUTY: Five eight three.

1 Juror number 594.

2 Juror number 610, six one zero.

3 Juror number 512 -- I'm sorry. 612.

4 Juror number 616, six one six.

5 And juror number 626, six two six.

6 THE COURT: Okay. Those of you who are in the jury

7 box --

8 MR. HEGYI: Wait one second, one moment, Your Honor.

9 THE COURT: Review the numbers, please.

10 COURTROOM DEPUTY: I'm sorry, Your Honor. The last
11 juror is not 626.

12 THE COURT: Which is it?

13 COURTROOM DEPUTY: It's 638.

14 THE COURT: Who is 638?

15 COURTROOM DEPUTY: 638.

16 THE COURT: Okay. Very well. Those of you who are
17 not standing, who are sitting in the jury box, would you be so
18 kind as to exit and sit in the back and sit in the general
19 area again?

20 THE COURT: And, Diana, you can proceed to seat them
21 accordingly.

22 COURTROOM DEPUTY: Yes.

23 Juror number two -- I'm sorry, number four. 193.

24 THE COURT: One nine three.

25 COURTROOM DEPUTY: Yes. 252. 297. 352. 356. 360.

1 395. 453. 459. 459.

2 THE JUROR: Here.

3 COURTROOM DEPUTY: Ah. 482. 491.

4 Alternates, 583.

5 THE JUROR: Over here.

6 THE COURT: He's the first alternate.

7 COURTROOM DEPUTY: Yes.

8 THE COURT: First alternate.

9 COURTROOM DEPUTY: Here. 594.

10 THE COURT: Second alternate.

11 COURTROOM DEPUTY: 610.

12 THE COURT: Third alternate.

13 COURTROOM DEPUTY: 612. 616 --

14 MS. AGOSTINI: 612. That's the fourth.

15 COURTROOM DEPUTY: 612 is the fourth, yes. 616,

16 alternate five. And 638, alternate six.

17 THE COURT: Everybody's in agreement that these are
18 the jurors you selected?

19 MR. HEGYI: The Government is, Your Honor.

20 MR. RUHNKE: Yes, Your Honor.

21 THE COURT: Very well. We're going to proceed to
22 take their oath. Everybody stand up.

23 COURTROOM DEPUTY: All jurors, please raise your
24 right hand.

25 You and each of you do solemnly swear that you will

1 well and truly try and true deliverance make in the case now
2 on trial, and render a true verdict according to the law and
3 the evidence?

4 THE JURORS: (Answered affirmatively.)

5 COURTROOM DEPUTY: So help you God.

6 COURT SECURITY OFFICER: You may be seated.

7 THE COURT: Those of you who were not selected, let
8 me say that I thank you, I thank you, I thank you again for
9 your patience and for your availability so that we could
10 actually select a jury for this case.

11 I think that you're going to take them back to the
12 jury assembly room, Becky?

13 MS. AGOSTONI: Yes, Your Honor.

14 THE COURT: So you should follow Ms. Agostini. She's
15 going to follow you back to the jury selection room and give
16 you instructions there. Thank you very much.

17 (At 10:59 AM, jury panel left the courtroom.)

18 THE COURT: Very well. Members of the jury, now that
19 you have been selected for this case, I will give you some
20 instructions, additional instructions, more instructions, to
21 guide you in your participation during the guilt phase of this
22 case.

23 You remember that this case is going to be tried in
24 two phases. We're going to concentrate on the first phase and
25 forget about the second phase for the time being.

1 Let me give you some initial advice, if you will.
2 First of all, we have an Assistant U.S. Attorney sitting now
3 on the prosecution table, who was not here during jury
4 selection. She's the first assistant, Ms. Maria Dominguez.

5 MS. DOMINGUEZ-VICTORIANO: Good morning.

6 THE JURORS: Good morning.

7 THE COURT: Then we have on the other side the same
8 lawyers which you had before which you met during the jury
9 selection process. I should tell you that the attorneys that
10 are representing these defendants, who are for Mr. Candelario,
11 Mr. Ruhnke and Mr. Rebollo, and Mr. Aguayo for Mr. Oquendo,
12 have been appointed by the Court. And the Court will
13 compensate them for their services under a law that we know as
14 the Criminal Justice Act.

15 In the case of Mr. Candelario, Congress requires,
16 because he's a death penalty eligible defendant, that he be
17 entitled to the services of two appointed attorneys. That is
18 the reason why Mr. Candelario has two attorneys. I tell you
19 this to avoid any speculation about the source of the money
20 that is being used to pay for the defense in this case.
21 Actually, the Government funds that.

22 This is a relatively small community, and it may
23 happen that a member of the jury recognizes a witness as
24 someone he or she knows or is otherwise familiar with. If
25 that were to happen, please alert a member of my staff,

1 Mr. Villavicencio or Diana about the fact that you recognize a
2 witness so that I can have the opportunity to deal with that
3 situation at best -- at the first opportunity.

4 The fact that you know a witness doesn't mean,
5 doesn't mean necessarily that you cannot be a juror in this
6 case. Of course not. But it's something that I should get to
7 know so I can find out what are the circumstances, okay?

8 Please do not discuss this issue or any issue with
9 any of your fellow jurors until I have had a chance to decide
10 how to proceed. And I'm talking about the possibility that
11 one of you may have known one of the witnesses.

12 Since this is a small community and this is not a
13 huge courthouse, in the event that you run into any of the
14 lawyers at any time during the trial, lawyers or prosecutors,
15 of course, or you may run into them at a shopping center or
16 somewhere while you are having dinner or breakfast or
17 whatever, please do not think that they are being rude if they
18 do not greet you or say hello and simply turn back and walk
19 away. That is what I have instructed them to do to avoid any
20 suggestion of improper contact with any member of the jury.

21 They are not being rude. They are simply following
22 my instructions and doing exactly what lawyers in an ongoing
23 trial are supposed to do.

24 I also asked the lawyers earlier today that in --
25 that during the sessions, we should -- we should avoid every

1 time that a lawyer gets up saying for example, good morning,
2 members of the jury; good morning, Judge; this kind of thing.
3 I don't like that personally. It's not because I don't like
4 to say hello to people. It's simply this is a very formal
5 proceeding, and I prefer that matters be addressed properly,
6 members of the jury, Honorable Court or Court, whatever. And
7 that's it, you know. No salutations of any kind of that
8 nature.

9 Another thing that I should tell you is that both
10 Mr. Candelario and Mr. Oquendo, although tried together on
11 this first guilt phase, you have to give them complete
12 separate consideration as defendants and on each particular
13 charge which they are facing, because in truth and in fact,
14 each one is entitled, if you will, to a separate consideration
15 as if they were independently on trial. But they are not.
16 They are together, because we don't want to try the case
17 twice. But that's the rule, independent consideration of each
18 defendant.

19 As you will see, as we proceed, it may happen that
20 some evidence is allowed to -- as to a particular defendant
21 and not to the other. If I instruct you at some point in time
22 that a particular piece of evidence, this pencil, for example,
23 is allowed against X and not against Y, you have to follow
24 that instruction of course.

25 Very well. Well, let me continue now. It will be

1 your duty to find from the evidence that will be presented in
2 this case what the facts of this case are. You and you alone
3 are going to be the judges of the facts. You will decide the
4 facts of the case. To those facts, you will have to apply the
5 law as I will explain it to you, give it to you, at the end of
6 the case.

7 We always say that judges and jurors must follow the
8 law even if we personally do not agree with how the law reads.
9 There's a reason for that, and I'll tell you why there is a
10 reason for that. The law in a case like this one is given to
11 us by Congress, that is, the Federal legislature. Maybe some
12 principles of law may come from Puerto Rico law, also. Also,
13 these principles of law may come from judicial decisions
14 entered either by the Federal appellate courts and the Supreme
15 Court or even in some cases by the Puerto Rico Supreme Court,
16 depending upon circumstances.

17 We live in organized society, and we have some rules
18 to follow. The law is the law. We cannot change it here
19 arbitrarily. That's why we say we have to follow it
20 irrespective of whether we would make it different if we were
21 sitting in the legislature or in Congress.

22 So that is an extremely important principle. The law
23 must be followed irrespective of whether you agree with it or
24 not. I am here to preside over this case. I am not a passive
25 observer. I am the presiding Judge. Call me the case manager

1 if you will. My mission is to get this case tried in an
2 orderly fashion, following some rules, as fast as possible, as
3 I told you, without sacrificing quality.

4 That means that I will have to make some
5 interventions as we go along. I will have to make rulings. I
6 will have to tell the lawyers what to do or what not to do,
7 things of the sort.

8 Don't think for a minute that by doing that I am
9 trying to tell you what to do or what not to do. That is not
10 the purpose of my interventions. The purpose of my
11 interventions is simply to get the case going and have
12 decisions made according to my best judgment under some rules.
13 That's extremely important. Nothing that I do or say should
14 be taken by you as indicating what your verdict should be on
15 this guilt phase.

16 I always say that the role of the Judge is very much
17 like the role of the master sergeant in the Army or the
18 lieutenant or the captain, or even the teacher in the
19 classroom. Somebody has to be in charge. So I'm the one who
20 is in charge in that sense.

21 So I have to give -- tell the lawyers what to do and
22 what not to do, and make rulings, and give decisions. Take it
23 just like that. That's what it is.

24 Let's talk about the evidence. The evidence from
25 which you will find the facts will consist of the testimony of

1 witnesses. That is, people who are going to come and testify
2 before you under oath. It may consist of documents that the
3 Court may receive in evidence, may consist of objects that the
4 Court may receive in evidence, may also consist of facts that
5 the lawyers agreed to.

6 If the lawyers agree that this pencil that's going to
7 be received in evidence is a yellow pencil, branded Dixon, and
8 it's a number two, why should we present evidence about the
9 fact that this pencil is yellow, is a Dixon, is a number two.
10 If they agree to it, we will make a stipulation, and that's a
11 fact in the case. That's what stipulations are.

12 So you're going to consider testimony of witnesses,
13 documents received in evidence, exhibits or objects that the
14 Court may receive, and also agreements or stipulations that
15 the lawyers make and that I accept.

16 Certain things are not evidence, and I will tell you
17 now what they are. On two major occasions during the trial,
18 at the beginning and at the end, the lawyers will be able to
19 address you directly. At the beginning, they will give you
20 what we call the opening statement. Think of it as an index
21 to the case, as an introduction to a situation that is going
22 to develop here, a view that the lawyer has of what this case
23 is about.

24 At the end of the case, these same lawyers will come
25 and argue a case before you on the basis of the evidence

1 received. That's what we call the closing statement. Those
2 instances are extremely important to hear, to follow, to try
3 to understand fully, but the statements of the lawyers are not
4 evidence in the case. Lawyers are not here to testify or to
5 give evidence of any kind. So remember, opening statements
6 and closing arguments are extremely helpful, but they are not
7 evidence in the case at all. Okay?

8 Questions posed by lawyers, standing alone, are never
9 evidence in the case. Why is that? Because if we allow a
10 question by a lawyer to be evidence, what are we doing? We
11 are allowing the lawyer to testify through the question.
12 That's why we say the question is never evidence.

13 What is evidence is what the witness responds, what
14 the witness tells you happened or did not happen. In this
15 case there are going to be objections, like in any other case.
16 A case without objections is a boring case, believe me.

17 Lawyers have an obligation under the law to make
18 objections when they believe that evidence is being offered
19 against the Rules of Evidence or against the Rules of Criminal
20 Procedure or any other law. If an objection is made, I will
21 have to make a ruling. The ruling can be sustaining the
22 objection, that means granting it, or overruling the
23 objection, that means denying it.

24 You should never be influenced by any objection or by
25 any ruling that I may make. If I deny the objection, overrule

1 the objection, the evidence will come in. If I sustain it,
2 the evidence at that point in time under those circumstances
3 will not come in. There should be a reason in evidentiary law
4 that moves me to do that. Whether I do it right or wrong is a
5 different story, because I can commit mistakes of course. But
6 the ruling is the ruling, and the ruling has to be taken by
7 the parties and the jury.

8 You should never be influenced by, as I said before,
9 any objection or by any ruling that I make. Another category
10 of things that are not evidence, testimony that the Court --
11 the Court excludes, doesn't allow, or tells you to disregard,
12 if you heard it or if you were able to figure it out, is not
13 evidence and cannot be considered.

14 This case is not rehearsed. I have no idea what the
15 witnesses are going to say. It is entirely possible, entirely
16 possible that we may be examining a witness and five minutes
17 down the road after we have heard a couple of things there may
18 be a valid objection about something that you may have heard
19 or seen which could not be posed before, and then I have to
20 make a ruling.

21 And if I exclude that evidence and tell you you have
22 to disregard what you heard just a minute ago about this and
23 that, you have to make that mental exercise of excluding that
24 from the evidence in your head. Because the case is not
25 rehearsed. I don't know what can happen. And I don't have a

1 black ball that tells me here everything that's going to
2 happen or how I'm going to rule on things. So it is entirely
3 possible that that is a situation that can occur. So
4 remember, testimony that the Court excludes or tells you to
5 disregard is not evidence and cannot be considered.

6 And of course this rule is extremely logical.
7 Anything you see outside the courtroom is not evidence in the
8 case. The evidence in the case consists solely of the
9 evidence received here, in this courtroom, all of us present,
10 you sitting there, the witnesses sitting there, everybody
11 together. What may happen in the hallway, what may happen in
12 the cafeteria, what may happen in the street, what the papers
13 may publish is not evidence in the case at all, cannot be
14 considered, period.

15 Remember what I told you when I gave you the original
16 instructions, the press has all the right in the world to
17 publish about the case. But the press are not sitting in this
18 jury. You are the ones who are going to be receiving the
19 evidence. You're going to be the ones who are going to be
20 qualifying this evidence, receiving it, and eventually
21 deciding on it. So you're going to go by what happens here,
22 and not what happens outside of the courtroom.

23 There are two kinds of evidence that we all deal with
24 in any case, direct evidence and circumstantial evidence. I'm
25 going to advance to you that the law is very wise, and the law

1 says that both direct evidence and circumstantial evidence
2 have the same value before the law.

3 What is direct evidence? Direct evidence is direct
4 proof of a fact. I was present when something happened. I
5 participated in the signing of a document. I took a
6 photograph of something. I saw somebody. And I come here to
7 court and I tell you about it. It has nothing to do with
8 credibility, has nothing to do with the weight of the
9 evidence. It's simply direct evidence by a person. I was
10 there, Judge, and I saw what happened. Direct evidence.

11 Then you have circumstantial evidence, proof of a
12 chain of circumstances from which you can make an inference
13 that another fact indeed exists, proven. This is the way I
14 see it. In life, in human life, things don't happen always in
15 a black and white fashion. We humans operate at a human
16 level, with a lot of gray. A lot of gray. There may be
17 black. There may be white. There may be gray.

18 So in order for us to make or construct a picture of
19 what happened in any case, you have to definitely look at the
20 direct evidence and the circumstantial evidence. And the
21 circumstantial evidence is the one that allows you to make
22 inferences as to something that may have occurred

23 I'm going to give you an example. I am standing in
24 front of this courthouse because I had an intention of
25 crossing the street to go to Subway and have a tuna wrap. And

1 an accident occurs, two cars crash in front of the courthouse
2 here right in front of the Subway. I am standing right there
3 ready to cross the street, and I see the accident happen.

4 Two cars, a Buick and a Chevrolet, they collide, and
5 there are injured people, the whole bit. I decide to walk to
6 the cars to see if there is anything I can do to help, because
7 I see there is somebody injured there, okay? I am going to
8 call -- I am going to come here to court and tell the jury, I
9 was standing in the sidewalk. I was about to go to Subway. I
10 saw an accident occur. My perception was that the red car was
11 coming too fast, and made a zigzag and hit the blue car for
12 example. I tell the jury that. It may be a wrong perception
13 of mine, but it's circumstantial evidence, okay?

14 Then the story goes on like this. I come close, and
15 I open the door of the car who I thought was the one who
16 caused the accident. And the gentleman who is in the car is
17 kind of in a daze, and I try to pick him out of the car, get
18 him out of the car, and he gives me a very strong smell of
19 liquor.

20 I could tell a mile away that there is liquor in his
21 breath. And I look in the car, and I see two rum canecas (ph)
22 on the floor, okay, empty. I never saw this man drink. I
23 don't know whether those canecas were the ones he drank, but I
24 could make an inference on the basis of that circumstantial
25 evidence that it's entirely possible that alcohol had to do a

1 bit with this accident. You see? Circumstances made me,
2 allowed me to make the inference that perhaps alcohol was
3 involved. And I am brought to court to give that evidence,
4 too.

5 So you have examples of direct and circumstantial
6 evidence, okay? Remember, both kinds of evidence have the
7 same value before the law, and you have to give both kinds of
8 evidence the same value before the law. In life things don't
9 always happen in a black and white fashion. You have direct
10 and you have circumstantial.

11 You will be the sole judges of the credibility of the
12 witnesses. That means that the jury decides what to believe
13 and what not to believe, how much of a given witness'
14 testimony you're going to accept and how much you're going to
15 reject.

16 And how is it that you go about deciding credibility?
17 Well, there are some ingredients that are needed. First, you
18 have to be of legal age, have lived long enough in life, have
19 experience in life, be mature. All of you are. That's why we
20 don't have -- that is why we don't have here people sitting in
21 this jury who are A plus students out of high school who have
22 no experience in life. We have citizens who have lived long
23 enough to figure out things. So that's an ingredient.

24 Then you look at the witness or the person that is
25 coming before you, and you are entitled to assess the demeanor

1 of the person. Demeanor means how is this person projecting
2 himself or herself to you? What impression are you receiving?

3 What kind of answers is he giving? Is he giving you
4 the impression or is she giving you the impression that the
5 answers are truthful? Is it the kind of thing that you're
6 willing to believe? Is that the way things happen according
7 to your experience? Is the story consistent? Is the story
8 inconsistent? Is the consistency all throughout? Is there
9 some inconsistency but the inconsistency is minor, that it
10 really doesn't effect it?

11 You look at all that, and out of that you have to
12 decide how much of that given witness's testimony you're going
13 to accept and you're going to reject. So there are a lot of
14 factors. The interest of the parties, who is who? The
15 relationship a party may have with another party. All those
16 things, like you do in your daily lives when you make a
17 credibility decision.

18 When I talk to my -- one of my children, and to make
19 a credibility decision as to what happened, that's exactly
20 what I do, and you do the same. You hear their story. You
21 look into their eyes, and you figure out, this kid is not
22 telling me the truth or this kid is really telling me the
23 truth. Simple as that.

24 No precise science. We don't have an instrument that
25 measures credibility. You have to use your experience as

1 adult human beings, okay?

2 Some rules about criminal cases that are unique, I
3 told you about these already. I will repeat them again.
4 First, each defendant is presumed innocent until proven
5 guilty. That is a constitutional protection. The Indictment
6 brought by the Government is not evidence of guilt or of
7 anything else. It's simply a piece of paper that contains a
8 written accusation. Nothing more. It is not proof of guilt
9 or of anything. Each defendant starts a trial with a clean
10 slate, that is, with no evidence against him.

11 Second, the burden of proof is on the Government
12 until the very end of the case. The defense has no burden to
13 prove innocence or to present any evidence or to testify.
14 That is another constitutional provision, mandate.

15 The silence of the accused is sacred. Since the
16 defendants have the right to remain silent, the law prohibits
17 you from arriving at your verdict by considering that a
18 particular defendant or both defendants have not testified.

19 Third, the government must prove the defendant's
20 guilt on every particular count in that Indictment beyond a
21 reasonable doubt. Separate consideration of defendants.
22 Separate consideration of counts.

23 Beyond a reasonable doubt is the standard. The
24 standard is different from that used in civil cases. In civil
25 cases we use a lesser standard, proving that something is more

1 | likely true than not true, or more likely so than not so. So
2 | if you sat in a civil case, take that off your head. Here it
3 | is proving beyond a reasonable doubt. Proving what? Proving
4 | guilt beyond a reasonable doubt.

5 | You remember during the questioning that we had on a
6 | one to one with you that the issue of penalty and whether life
7 | or death or whatever, all these things were discussed.
8 | Remember that that is not to be considered in this first
9 | phase. This is simply what we refer to as the guilt phase for
10 | lack of a better name, okay? So take that issue of punishment
11 | off your head now. Don't even let it come into your
12 | deliberations, because we are concentrating on something that
13 | is preliminary in nature. To decide whether the government
14 | can prove a case beyond a reasonable doubt or not. Okay?

15 | So in that sense, the major talk about penalty was
16 | regarding Mr. Candelario, because he was a death penalty
17 | eligible defendant. And I bet you that nobody, nobody
18 | mentioned, I don't remember anybody mention what kind of
19 | penalty may apply as to the other defendant.

20 | But my instruction to you is not to be concerned with
21 | that, because that is a matter that has no importance
22 | whatsoever at this stage. And it's a matter that eventually
23 | as to the other defendant is for me to decide, okay? Not even
24 | the jury. For me to decide, okay?

25 | A few words about your conduct as jurors. During the

1 trial, during the deliberations, during all the time that you
2 are with us, you are not to discuss this case with anyone or
3 allow anybody to discuss this case with you. That is an
4 obvious rule. I told you why.

5 You should never, ever allow any outside inference to
6 come into play. That includes your family and your friends.
7 Your family, your friends, your work associates, whomever.
8 Don't discuss it. The same way that nobody would stop me in
9 the street to ask me, hey, Judge, how is the case going? The
10 same way nobody can do that with you, okay? Is that clear?

11 You are not going to talk about this case until you
12 retire to the jury room at the end of the case to deliberate
13 after I tell you that you're ready to deliberate. Remember
14 that outside influences, family, friends, whatever, are not
15 part of the jury, okay?

16 Don't forget that prohibition that I mentioned when
17 I instructed you every day as you came in regarding other
18 forms of communication over the internet, such as e-mail,
19 instant messaging, use of web sites or consulting blogs and
20 things of the sort. It is improper, illegal, wrong for any
21 juror to access information about any part of this case or
22 anything about this case from those sources. You cannot do
23 that. It's as simple as that. Cannot be done. Cases must be
24 decided solely upon the evidence received here, and nothing
25 else.

1 Regarding text messaging, sending messages or audio
2 recording and things of the sort, remember that you are not
3 allowed to do that either. Of course you're going to have
4 your cell phones, so many times you can call your wife, call
5 your children to see how they're doing in school, that kind of
6 stuff; but never to communicate about the case or receive
7 information or consult with anybody about this case. Nothing
8 of that is going to happen here. Is that clear?

9 Okay. Do not read or listen to anything touching
10 upon this case in any way. I told you what I do with these
11 things. I'm not asking you not to read the newspaper, because
12 that would be unfair. You have to know what's going on in the
13 community. But you have to have the discipline not to read
14 about the case.

15 Read about the Governor. Read about the president of
16 the Senate. Read about the hassle with the legislature.
17 Read about sports. Read about what's going on in Syria, or
18 in -- or about the meteor in Russia. Whatever you want to
19 read about. But on this case you are not going to read,
20 period, nothing of the sort. You are here. You don't have to
21 allow any third party to influence you by what they publish.
22 Okay?

23 Remember, and this is in a sense repetition, no
24 research or investigation of any kind on your own. If there
25 is a need for research, I'll take care of it. Or the lawyers

1 will tell me, and I'll take care of it. If there's a need for
2 investigation, believe me we'll take care of it. As simple as
3 that.

4 And finally, it's extremely important, do not form an
5 opinion until all the evidence is in. You have to keep an
6 open mind until the very end of the case. The Government
7 starts, and we're going to be weeks hearing the Government.
8 And the defendants have no burden to present any evidence at
9 all. They don't have a burden. They can remain silent. You
10 know that. It's sacred, their silence. But if they want to
11 present evidence, of course we have to hear it, too, see?

12 So you cannot, you cannot under any circumstance
13 engage in mini deliberations as we go from day-to-day. The
14 process is receiving evidence, receiving evidence, receiving
15 evidence. And when I instruct you on the applicable law and
16 tell you you are ready to go out there and make a decision
17 through the deliberation process, only then can you do that.

18 And remember the analogy that I made to the baseball
19 game. A case is like a baseball game. It's not over until
20 the ninth inning is called, and the last out is called.
21 That's it. You cannot engage in mini deliberations ever in
22 the case.

23 Very well. With that in mind, what happens next is
24 that I will ask the lawyers whether they have any objection to
25 the preliminary charge for a guilt phase case.

1 MS. DOMINGUEZ: None from the Government, Your
2 Honor.

3 MR. RUHNKE: No, sir, not from us.

4 MR. AGUAYO: No, sir.

5 THE COURT: Very well. Now what will happen is we
6 will hear -- we're going to give you a five minute recess or
7 six or seven minute recess. And then we're going to come back
8 and start hearing the opening statements.

9 The opening statements, as you already know, are the
10 chance that the lawyers have to address you directly and tell
11 you what they think their case is about. A dictionary
12 definition of an opening statement. Outline or summary of the
13 nature of the case. Perhaps of the anticipated proof, not
14 necessarily. They don't have to even say that. To let the
15 jury have an idea what this case is about.

16 The purpose is to advise the jury of facts relied
17 upon, and to give the jury a general picture of the facts and
18 of the case. It's like an outline of facts which both sides,
19 prosecution and defense, bring before the jury, with the
20 expectation that they can actually prove it or disprove it,
21 okay? That's what it is. Nothing else. And remember that
22 that's what it is.

23 We'll take a short recess and be back in five or ten
24 minutes.

25 COURT SECURITY OFFICER: All rise.

1 (At 11:31 AM, recess taken.)

2 (At 11:48 AM, proceedings reconvened.)

3 (At 11:48 AM, bench conference held.)

4 MR. AGUAYO: My question is, my client's parents, can
5 they be allowed to have earphones so they can hear? I've
6 spoken to the translators.

7 THE COURT: What did they say?

8 MR. AGUAYO: They said they have two extra pairs.

9 THE COURT: I don't mind if you have extras, if you
10 have batteries that won't compromise the use of the
11 defendants. I don't mean that --

12 THE INTERPRETER: I need to meet Hilda halfway.

13 THE COURT: Well, as soon as you get extras, we'll
14 let them have --

15 THE INTERPRETER: Judge, what if we have other
16 persons asking, like the two persons -- like the other
17 parents?

18 MR. AGUAYO: I don't think the other parents will.

19 THE COURT: I cannot give it to everybody.

20 MR. AGUAYO: No, no.

21 THE COURT: Why don't we wait until this afternoon
22 and see what happens, because otherwise it's a hassle.

23 MR. AGUAYO: I don't think Alexis' parents are going
24 to be here, frankly.

25 THE COURT: Well, you never know.

1 (Bench conference concluded.)

2 THE COURT: Okay. Remember the rule that I have for
3 openings and closings is as short as possible without
4 sacrificing quality, and no repetition. That's all.

5 Very well. Let's bring the jury in. You can do it
6 from there if you want. There's no issue. That's fine.

7 MS. MATEO: Thank you.

8 MS. DOMINGUEZ: Your Honor, we prepared a trial
9 notebook for you.

10 THE COURT: I have it. I have it. Thank you.

11 Ms. Mateo, you can make your opening statement.

12 (At 11:55 AM, jurors entered courtroom.)

13 MS. MATEO: October 17, 2009, was supposed to be a
14 festive day. That afternoon, members of a small community
15 gathered together with family and friends to celebrate the
16 grand opening of a local bar called La Tombola. People
17 dressed up, some people bought new outfits, and gathered
18 together that afternoon and evening at La Tombola.

19 You will hear testimony that fliers were distributed
20 to promote the event. There was a calbagata in the afternoon,
21 earlier that night. There was a band playing, La Bomba swing.
22 The atmosphere was festive, joyful, friends and family
23 enjoying themselves in this small community, many of which
24 grew up together, knew each other, and were even related.

25 By 11:30 that night, the small establishment was

1 crowded with people. Outside even more people were there.
2 There was a fritura stand, and families were there, children,
3 elders, all together for this joyful celebration. Dancing,
4 laughter.

5 At approximately 11:45 PM that evening, everything
6 changed. The joy turned into terror, the laughter into
7 screams, and panic gripped the crowd as they tried desperately
8 to survive. Men with automatic and semi-automatic rifles
9 stormed towards La Tombola. Some of these hitmen began to
10 shoot in the crowded streets outside, and the shots continued
11 with deafening force, with a slight pause, only to resume
12 again. A deadly storm of bullets.

13 Inside La Tombola, people took cover and hid wherever
14 they could. It was like a nightmare, except that it was real.
15 And in this small building, there was no escape. No back
16 door. No side door.

17 Desperate to survive, some people hid in the
18 bathroom, some under the pool table, some perhaps behind a
19 column, all trying to seek sanctuary. The shooting continued.
20 Some people were killed, and others were injured.

21 Blood and gun smoke filled the air. Some of those
22 who were alive played dead, laying motionless in the chaos,
23 hoping that it would maybe save their lives. One woman, who
24 was shot nine times, lay there still as a gunman stood over
25 her and kicked her foot to see if she was still alive.

1 People desperately tried to protect their loved ones.
2 One man covered his wife's body, not evening realizing she was
3 already dead. To the victims, it seemed like an eternity.
4 But in reality, it was over in a few minutes. The armed men
5 calmly left. The shots finally stopped. But death, horror,
6 and devastation remained.

7 In this trial, you'll learn that eight people died,
8 and a full term baby was killed in her mother's womb. A baby
9 who would never have the opportunity to be born. 20 people
10 were physically injured. Many more suffered emotional trauma.

11 And you will have the opportunity to hear from many
12 of the victims that survived that night of terror. And they
13 will tell you, firsthand, what they saw and what they heard.
14 And they will tell you about the loved ones they had lost that
15 tragic night.

16 The evidence will show that Alexis Candelario and
17 David Oquendo Rivas were two of the shooters at La Tombola
18 that night. You will learn that Alexis Candelario Santana was
19 the architect of this unimaginable mayhem. And you will learn
20 why. Why? The evidence will show that Alexis Candelario
21 Santana was the leader of a drug trafficking organization
22 described in the Indictment as an enterprise.

23 And you will learn that the enterprise began in or
24 approximately around 1993. And it was staffed by a close
25 group of individuals who were involved in the business of

1 processing, packaging, and distributing various illegal drugs
2 in the area of Sabana Seca, Toa Baja, Puerto Rico.

3 Over time, some of the members of this enterprise
4 changed. Some died. Some went to prison. The roles changed.
5 New members were added. But the enterprise continued. The
6 enterprise operated mainly in this area surrounding this
7 native palo de goma tree.

8 As such, their primary drug point was called palo de
9 goma in Sabana Seca, Toa Baja. But although that was their
10 primary area of distribution, you will also learn that there
11 were other areas as well.

12 Now, from approximately 1993 to approximately 2003,
13 Alexis Candelario Santana was the undisputed leader of this
14 organization, this enterprise. And Alexis, who's also known
15 as Congo, would purchase large quantities of raw drugs, some
16 of which would be processed in home laboratories.

17 And, for example, powder cocaine would be processed
18 into crack cocaine. And these drugs would be packaged into
19 quantities, sizes and amounts, and would be ready, sold to
20 users and addicts.

21 Alexis had various lieutenants under him and numerous
22 sellers, runners, and enforcers, who all worked for him. You
23 will learn from an expert that specializes in these drug
24 trafficking organizations, that's normal and typical for an
25 organization to be organized and run precisely in this manner.

1 Purchasing drugs in bulk, processing and packaging the drugs,
2 and then selling them at these drug points, palo de goma.

3 The evidence will show that Alexis' enterprise sold
4 crack cocaine, heroin and marijuana, and it often grossed
5 between 8,000 to \$10,000 a week.

6 Now, you'll learn that between 1995 and 2001, in
7 order to defend and promote his enterprise, Alexis personally
8 murdered or ordered the murders of some 13 people. Some that
9 Alexis felt were disloyal employees. Some of the people were
10 people he thought were rivals to his enterprise, or his role
11 within the enterprise. Some of them he thought were
12 associated with others who could cause him harm or cause his
13 organization harm. This was Alexis' war.

14 You will learn that at some point, realizing that his
15 lieutenants had been arrested or might be cooperating with the
16 Government, Alexis decided to relocate from Puerto Rico to
17 Detroit, Michigan. And from Michigan he continued to control
18 the enterprise in Puerto Rico.

19 However, he expanded his reach of the enterprise to
20 Michigan. And eventually he even brought his brother,
21 Wilfredo Candelario Santana from Puerto Rico to be his
22 lieutenant there.

23 Now, you'll learn that in 2003, Alexis pled guilty to
24 11 murders in local court, and he was tried and convicted of a
25 12th. You will learn that prison did not stop Alexis from

1 participating or attempting to participate in the operations
2 of this enterprise. And you will learn that being in prison
3 certainly did not change him.

4 Carmelo Rondon Feliciano, also known as Panzon or
5 Omi, and Wilfredo Sempritt Santana, also known as Rufo, were
6 left in control of the enterprise while Alexis was in jail.
7 Rufo is Alexis' cousin.

8 Now, Alexis tried to maintain his control of the drug
9 organization while he was still in prison. So for a time,
10 Alexis went to prison and Omi and Rufo would continue to share
11 some of the profits of the drug organization with him in
12 prison. You'll learn that eventually, disputes over money
13 happened and separated these three.

14 You're also going to hear about two seizures, one in
15 2006 in Puerto Rico, and one in 2007 in Michigan. Now, the
16 seizure in 2006, in Puerto Rico, results from a wire tap. So
17 one of the lieutenants who Alexis had left in charge to run
18 the drug trafficking organization while Alexis was in prison
19 was involved.

20 And this seizure involved various weapons, including
21 various AK-47 type of weapons, drums of ammunition that would
22 allow the firing of over a hundred rounds without having to
23 reload, numerous extended clips, semi-automatic pistols,
24 ammunition, and a substantial amount of narcotics and
25 packaging materials.

1 You will hear some of these wire tapped conversations
2 from 2006, between some of the members of the drug trafficking
3 organization, which will give you an insight to the operation
4 of this illegal enterprise. Omi was one of the people, excuse
5 me, arrested in 2006. And you will hear Omi's voice on some
6 of these calls. You'll also learn that Omi supplied the drugs
7 to Alexis' organization.

8 After the arrest of Omi, Rufo became the one to take
9 over the day-to-day operations of the Puerto Rico branch of
10 the drug trafficking organization.

11 And remember I told you earlier that Alexis had
12 moved to Michigan earlier to get away from some of the heat
13 in Puerto Rico, and that he expanded his drug trafficking
14 organization to Michigan, and even brought his brother,
15 Wilfredo, there to be his lieutenant? Well, the evidence
16 there will show that Wilfredo continued to operate this
17 Michigan branch of Alexis' drug trafficking organization, and
18 that was while Alexis was in prison in Puerto Rico.

19 Now, you'll learn that the 2007 seizure involved a
20 brick of cocaine that was mailed to Detroit, Michigan from
21 Sabana Seca, Puerto Rico. And that Wilfredo Candelario
22 Santana was collecting the cocaine, and he was arrested in the
23 parking lot of an apartment building with a package containing
24 the cocaine.

25 Eventually, the payments of the profits of the drug

1 organization, the drug trafficking organization, stopped as
2 disputes over money heated up. Enraged, Alexis threatened to
3 kill his cousin, Rufo, upon his release from prison in order
4 to regain his position as the undisputed leader of this drug
5 trafficking organization.

6 You will hear from Rufo about the threats that he
7 received from Alexis while he was in prison. And you'll also
8 hear from a fellow inmate of Alexis, who will tell you about
9 how Alexis threatened to kill his cousin upon release.

10 In February, 2009, Alexis was released from prison,
11 and he had one thing on his mind. Revenge. Alexis continued
12 to threaten Rufo to regain control of the drug points.

13 Meanwhile, Rufo rented a pub, this local bar called
14 La Tombola. He scheduled the grand opening for October 17th,
15 2009. And this event was promoted with fliers.

16 And it was revenge that led to the tragic events of
17 October 17, 2009. Alexis wanted to reclaim his position of
18 leadership in his drug trafficking organization, and he wanted
19 to send a clear message that he would not be betrayed.

20 And the evidence will show that Alexis is not a
21 forgiving person. Things had to be done his way. And whoever
22 stood in his way, would pay a high price. Their life.

23 La Tombola was a battle in Alexis' war, and the
24 victims of La Tombola paid with the highest price imaginable,
25 they paid with their lives. Eight people dead, one unborn

1 baby dead, 20 injured, and over 300 spent casings.

2 The evidence will show that one of the firearms used
3 during the La Tombola shooting was recovered by the Police of
4 Puerto Rico. On October 20th, 2009, police officers went to
5 Sector 26 in Toa Baja, Puerto Rico, to investigate a tip that
6 suspects or people injured from La Tombola were there. And
7 as the officers arrived to that location, they observed
8 David Oquendo Rivas and another individual in front of a
9 residence.

10 Three firearms were recovered that day. After being
11 caught, David accepted that the three firearms were his, but
12 quickly added that the firearms had nothing to do with La
13 Tombola.

14 You will learn that that statement made by David was
15 far from the truth, because one of those firearms was a
16 positive match to 20 projectiles recovered from the La Tombola
17 scene.

18 La Tombola was only one of the battles in Alexis'
19 war. You will hear from one of Alexis' soldiers, Braulio
20 Ortiz, also known as Menor, who will tell you about the inside
21 of this drug trafficking organization, and what it was like to
22 be a soldier in Alexis' war. He will talk to you about the
23 other murders committed by Alexis or the murders that were on
24 Alexis' orders.

25 You will also hear from some of the law enforcement

1 officers who arrived to those scenes. More casualties of
2 Alexis's war. More terror. More loss. There are some things
3 that will not be disputed in this trial. What will not be
4 disputed in this trial is Alexis Candelario Santana was
5 convicted to one of those murders and pled guilty to 11 of
6 those prior murders.

7 The evidence will show that each one of those murders
8 was somehow related to Alexis' drug business, to Alexis' war.
9 Each murder, a battle in his war.

10 Now, let me briefly address the Indictment in this
11 case. Count One of the Third Superseding Indictment describes
12 an enterprise, which is this drug trafficking organization
13 explained before. Count One is a RICO conspiracy, and RICO is
14 short for Racketeering Influence and Corrupt Organizations
15 Act.

16 Now, the purpose of this enterprise include enriching
17 the members and associates of the enterprise through the
18 distribution of narcotics, preserving and protecting the
19 power, territory and profits of this enterprise through the
20 use of intimidation, through the use of violence, threats of
21 violence, assaults, and murder. Another purpose was keeping
22 victims in fear of the enterprise, and in fear of its members
23 and associates through threats of violence and murder.

24 Count One, this racketeering conspiracy, is between
25 approximately 1993 and October 2009. And Alexis Candelario

1 Santana and others being a part of this enterprise, this drug
2 trafficking organization, did participate directly and
3 indirectly in multiple acts in connection with their operation
4 of this illegal business. So this includes narcotics
5 trafficking, and murder.

6 Count One also lists overt acts that were in
7 furtherance of the conspiracy. And each prior murder, each
8 one of those casualties of Alexis' war is listed as an overt
9 act.

10 And there's 13 victims of the prior murders: Javier
11 Martinez Ramos, Julio Angel Martinez Santana, Andres Torres
12 Oquendo, Melvin Medina Arce, Jimmy Nelson Velez Matos, Orlando
13 Cardona Ortiz, Saul Padin Orozco, Silvestre Gonzalez Santos,
14 Richard Matias Negron, David Nieves Carmona, Zuly Santana
15 Frances, Harry Santiago Santiago, Erick Morales Alvarez.

16 Murder after murder. All these prior murders. And
17 also, all the murders of La Tombola and all the attempted
18 murders of La Tombola are all listed as overt acts in Count
19 One. And Alexis Candelario Santana is charged in Count One.

20 Both defendants are charged in Counts Two through 10,
21 and these counts represent violent crimes in aid of
22 racketeering activity, explained in Count One. And these are
23 also called VICARs. Now, the counts represent not only a
24 violent crime in aid of this racketeering activity, but also
25 victims, lives lost at La Tombola.

1 Count Two, murder of Joan Manuel Class Guzman.

2 Count Three, murder of Pedro Sempit Santana.

3 Count Four, murder of Jose Angel Hernandez Martinez.

4 Count Five, murder of John Henry Garcia Martinez.

5 Count Six, murder of Elisa Del Carmen Ocasio.

6 Count Seven, murder of Samuel Ruiz Martinez.

7 Count Eight, murder of Rafael Angel Ramos Rivera.

8 Count Nine, murder of Tina Marie Rodriguez Otero.

9 Count 10, murder of unborn child.

10 Counts 11 through 19 are firearms charges. The
11 counts charge both defendants with having carried and used a
12 firearm in relation to a crime of violence, during and in
13 relation. So specifically, murder.

14 And these Counts 11 through 19, the firearms charges
15 are relating to La Tombola.

16 Counts 20 through 28 charge both defendants with drug
17 related murders relating to victims of La Tombola.

18 Counts 29 to 49 charge both defendants with
19 additional violent crime in aid of racketeering activity,
20 VICARs. Counts 29 through 49 are the attempted murders from
21 La Tombola.

22 Count 29, attempted murder of Carmen Maria Garcia
23 Santiago.

24 Count 30, attempted murder of O.F.M., a minor.

25 Count 31, attempted murder of Wilfredo Sempit

1 Santana.

2 Count 32, attempted murder of Amarilys Fonseca
3 Martinez.

4 Count 33, attempted murder of victim number two,
5 Melissa Fonseca.

6 Count 34, attempted murder of victim number three,
7 Jose Amezquita Sempritt.

8 Count 35, attempted murder of victim number four,
9 Miriam Figueroa Robles.

10 Count 36, attempted murder of victim number five,
11 Jose Oquendo Sempritt.

12 Count 37, attempted murder of victim six, Jose David
13 Carmona Santos.

14 Count 38, attempted murder of victim number seven,
15 Carmen Sempritt Santana.

16 Count 39, attempted murder of victim number eight,
17 Adalino Amezquita Sempritt.

18 Count 40, attempted murder of victim number nine,
19 Felix Rivera Rivera.

20 Count 41, attempted murder of victim 11, Caleb Castro
21 Renta.

22 Count 43 (sic), attempted murder of victim 13,
23 Roselyn Rosado Miranda.

24 Count 44, attempted murder of victim 14, Oscar Gomez
25 Miranda.

1 Count 45, attempted murder of victim 15, Richard
2 Ramos Figueroa.

3 Count 46, attempted murder of victim 16, Erick
4 Delgado Garcia.

5 Count 47, attempted murder of victim 17, Angel Rios
6 Santos.

7 Count 48, attempted murder of victim 18, Juan Ramos
8 Vazquez.

9 Count 49, attempted murder of victim 19, William
10 Ramos Vazquez.

11 There were 20 attempted murders the night of La
12 Tombola.

13 Count 50 is charging Alexis with conspiracy with
14 intent to distribute controlled substances from approximately
15 1993 through October 2009.

16 Counts 52 and 51 are firearms charges, and
17 specifically possession of a firearm by someone with a prior
18 conviction. And counts -- charging Alexis.

19 Count 41 is for La Tombola. And Count 52 -- excuse
20 me. Count 51 is for La Tombola.

21 And Count 52 is for possession of a firearm on or
22 about November 4th, 2009.

23 Now, at the conclusion of this case, after you've
24 heard all the evidence, including the eyewitness testimony of
25 La Tombola victims, the testimony of Alexis' soldiers, the

1 forensic and scientific testimony of the experts in this case,
2 we will come back before you and ask you to return verdicts of
3 guilty against Alexis Candelario Santana and David Oquendo
4 Rivas, at each count of the Third Superseding Indictment.

5 And by your verdict, we will ask you to send a clear
6 message to Alexis Candelario --

7 MR. RUHNKE: Objection, Your Honor.

8 THE COURT: Sustained. Sustained. No message. Go
9 ahead.

10 MS. MATEO: To the defendants that their last battle
11 has been lost, and that the war stops here.

12 THE COURT: Thank you. Thank you very much.

13 Mr. Rebollo.

14 MR. REBOLLO: All right. May I have a second, Your
15 Honor?

16 THE COURT: Please.

17 MR. REBOLLO: May it please the Court?

18 THE COURT: Please.

19 MR. REBOLLO: Members of the jury, let me try to
20 summarize for you in one sentence what this case is really
21 going to be about. This is a case where the Government will
22 try to convince you that Alexis committed crimes and murders
23 which he, in fact, did not commit. Did not commit.

24 Alexis was not there the night of October 17, 2009,
25 at La Tombola. He was not. He didn't plan it. He did not

1 organize it. He did not carry it out. He was not the
2 architect of it, as he has been referred.

3 As he sits here today, he's an innocent man who has
4 been wrongfully accused of these murders. And we are here to
5 make sure he is not wrongfully convicted.

6 Let me remind you again, my name is Francisco Rebollo
7 Casalduc. And together with attorney David Ruhnke, we are
8 here to prevent the conviction of an innocent man, but we
9 cannot do it without you, because it will be your views of the
10 evidence that matter in this case. My views don't matter.
11 The prosecutor's views don't matter. The Court doesn't have
12 an opinion. And even if he did, your views would prevail over
13 his. It is your views that will decide this case.

14 Now, you just heard sister counsel summarize for you
15 their views of the evidence, but the prosecutors and the
16 agents were not there. You and I were not there. By the way,
17 Alexis was not there either. All the Government and the
18 prosecutors and the agents know is what other people have told
19 them.

20 And you will learn in this case that the people that
21 the Government has spoken to are people who will not be worthy
22 of your credibility, will not be worthy of your trust. They
23 will be people with reasons to lie, people with reasons to
24 misidentify, to point the finger to others and away from them.

25 They will be confessed and convicted drug

1 traffickers, and confessed and convicted murderers. That is
2 the type of evidence on which the Government -- or which the
3 Government has listened to and on which they have based these
4 charges. In the end, they will not be worthy of your trust.

5 But let me step back and talk about what the
6 evidence will show happened in this case, and let me start
7 with the night of La Tombola. First thing you should know
8 about La Tombola, like I already stated, Alexis was not there.
9 But here's what we know about La Tombola.

10 On that night, October 17, 2009, a group of heavily
11 armed individuals arrived at La Tombola. And a group of
12 heavily armed men were there waiting for them.

13 The owner of La Tombola, the one who was having this
14 big party, was the owner of the drug points in Sabana Seca at
15 the time. Him and his family members ran those drug points.
16 Him and his lieutenants were opening this bar, and they were
17 in constant fear. You've seen this in the news every day in
18 Puerto Rico, of warring drug gangs coming over and trying to
19 take their place.

20 The group that arrived opened fire. The group of the
21 men who were there, fired back. A crossfire developed. And
22 when the shooting had stopped, six people were dead at the
23 scene. One died approximately two weeks later, and two died
24 that night at an area hospital, including unfortunately the
25 unborn child of Carmen Maria Santiago.

1 Let me pause for a second and talk briefly about the
2 unborn child of Carmen Maria. No one will ever know who fired
3 the bullet that struck her unborn child. No expert evidence,
4 you will not hear any firearm evidence, no ballistics evidence
5 that will answer that question.

6 In fact, nobody will ever answer the question of who
7 fired the bullets that killed any of the victims at La
8 Tombola. The truth of the matter is bullets were flying
9 everywhere, and one of them struck Carmen Maria and ended a
10 life that had not yet begun.

11 So let me tell you something else about Carmen Maria
12 Santiago. Carmen Maria was from Sabana Seca or is from Sabana
13 Seca. She has known Alexis her entire life. She will tell
14 you, she will come here and tell you that if she had seen him
15 there, she would recognize him.

16 And she will tell you she saw four of the shooters,
17 and she did not see Alexis there that night. In fact, witness
18 after witness from Sabana Seca who knew Alexis, because they
19 grew up together, were there and will tell you they did not
20 see Alexis there that night.

21 Now, members of the jury, we live in a period and in
22 times of great technological advances. Great advances in
23 scientific evidence. But you will not hear any of that
24 evidence here. The greatest law enforcement agency in the
25 world, the FBI, will ask you to convict Alexis, and not

1 present to you any of the evidence that doesn't lie, any of
2 the evidence that does not make a mistake.

3 If you saw a video, you would know. If scientific
4 evidence was presented to you showing Alexis was there, you
5 would know. If there was a taped confession, you would know.
6 You will not hear, you will not be presented ever with any of
7 that type of evidence.

8 The evidence on whose basis you'll be requested or
9 asked to convict my client is the type of evidence I described
10 before, convicted drug traffickers, murderers, liars, cheats,
11 witnesses with reasons to point the finger at Alexis.

12 In fact, let me be more specific about that. The
13 Government, as you may expect, combed that area of La Tombola
14 after that night, searched every inch of that area for any
15 evidence of the shooters, any evidence that would tie Alexis
16 to that night.

17 And they were able to find no one that tied Alexis to
18 that. You will not hear, you will not hear -- they even, they
19 even occupied a vehicle in which the evidence will show or
20 they believe the shooters arrived. And they examined that
21 vehicle for everything, blood, hair samples, anything that
22 could be tested through DNA, fingerprints, everything.

23 They found fingerprints, the evidence will show, of
24 other individuals, but not one fingerprint tying Alexis to the
25 scene was found. There will not be evidence of any blood of

1 Alexis at the scene. There will not be any hair samples of
2 Alexis in the vehicle, at the scene, anywhere.

3 Flesh, saliva, anything that could be tested that
4 could place Alexis at the scene, you will not see that,
5 because it doesn't exist. In fact, the absence of such
6 evidence will lead you to conclude that Alexis wasn't there
7 that night.

8 You heard sister counsel tell you that Alexis also
9 ran a drug organization from 1993 up to 2009, but let me tell
10 you about some more evidence that you will not hear in this
11 case and the evidence in this case will not show. The
12 evidence will not show that Alexis was ever, ever arrested in
13 possession of an ounce of narcotics. Ever, in all those years
14 in which he supposedly ran this drug empire, not one ounce of
15 marijuana was seized from him. Not one ounce of cocaine,
16 heroin, nothing.

17 Alexis was never arrested in possession of a weapon.
18 This killer that they have described, never, ever arrested in
19 possession of a weapon.

20 There was never any search warrant conducted of his
21 vehicles, his homes, nothing that would tend to indicate that
22 he was involved in drug trafficking. It was never found.
23 You're never going to hear any evidence. No scales, the
24 typical paraphernalia of the drug trade. No scales, no
25 ledgers, no accounting bills, nothing, ever, ever found.

1 The Government will claim that during all those
2 years, this drug point that he supposedly managed generated
3 tens of thousands of dollars a day, millions of dollars a
4 year. The evidence will not show, and you can be sure they
5 looked, the evidence will not show that Alexis ever spent any
6 significant amount of money buying anything.

7 They never found him purchasing vehicles, purchasing
8 jewelry, purchasing homes. Nothing. He didn't have bank
9 accounts, nothing. Nothing that would suggest he was indeed
10 receiving the benefits of the drug trade, drug empire that he
11 supposedly ran.

12 So you will be asked to conclude, you will be asked
13 to conclude that he ran this drug empire with all this
14 evidence nonexistent. In fact, you heard sister counsel tell
15 you that there were wire taps of this organization in Sabana
16 Seca, in the drug trafficking organization in Sabana Seca,
17 that the FBI conducted or the DEA conducted. They recorded
18 the drug trade there.

19 You will not hear that Alexis was ever once recorded
20 in a drug conversation, even though they were wire tapping the
21 phones of the drug traffickers in the area. And he was never
22 even talked about in any of those conversations. Some drug
23 trafficker. Some kingpin.

24 You will be asked to conclude that he was always
25 these things. Based on what? Well, let me tell you based on

1 | what. You heard sister counsel refer to Wilfredo Sempritt
2 | Santana, also known as Rufo, as the owner of the bar. The
3 | bar, La Tombola, was opening that night.

4 | Well, in Sabana Seca circles, he wasn't just known as
5 | the owner of the bar. He was known as the owner of the drug
6 | points in the area. Him, his brother Pedro, who was one of
7 | his lieutenants, and a number of other individuals. You'll
8 | learn in this case that he had reasons to falsely accuse
9 | Alexis of having done this.

10 | In fact, we will bring you evidence of affirmative
11 | efforts by members of the Sempritt Santana family to convince
12 | the people who were there at La Tombola that night to falsely
13 | say that they saw Alexis there that night.

14 | That night Rufo -- I will refer to him as Rufo for
15 | easy reference. That night Rufo, who in addition to what I
16 | have told you had a criminal record, a long criminal record,
17 | and that night he was serving a 27 year probation sentence for
18 | kidnapping and attempted murder of two police officers.
19 | These are the people they're going to ask you to believe, to
20 | base the important decisions that you have to make in this
21 | case.

22 | He was on probation that night, and yet he'll admit
23 | to you that he was running the drug point. He was also a drug
24 | trafficker. And he was carrying weapons.

25 | So every day of that probation, he was violating

1 state law and violating Federal. This is Rufo. And that very
2 night of La Tombola, he brought to La Tombola two of his
3 weapons, a nine millimeter Smith and Wesson and a .40 caliber
4 Ruger, with extra clips.

5 In fact, he had so many clips he had to give some to
6 his wife. His wife was carrying some of the clips for him.
7 And as you know, carrying ammunition in Puerto Rico without a
8 license is a crime, too. You should ask yourself why would
9 there be a need for Rufo, when he's opening, having this party
10 on this joyous occasion, to have -- to be armed like that?

11 Well, but not only was he armed. He had his posse
12 there. He had his crew there. He had his henchmen, his
13 triggermen, his lieutenants. One of them, his brother Pedro,
14 also armed. And there were three additional individuals. All
15 armed.

16 And he will tell you that when he got there that
17 night, the first thing he asked them was, are we ready? And
18 he will tell you that by that he meant, are we ready, are we
19 armed, are we locked and loaded, are we ready for whoever
20 comes?

21 Those were the people who were there that night. And
22 Rufo will be the one who would point the finger at Alexis, for
23 reasons that you will know later.

24 Now, in addition, in addition to Rufo, there may be
25 another individual who will claim that he saw Alexis there

1 that night. But this is a person who the evidence will show
2 did not come forward until well over a year later. Did not
3 come forward until he had seen Alexis' picture in the
4 newspaper, after he had been arrested. And this is a person
5 who lived in the precise area where Rufo's family was trying
6 to influence people to try to convince them to testify falsely
7 that Alexis was there that night.

8 Let me set the scene for you, because one of the
9 things you will have to decide in this case is if the
10 circumstances were such that eyewitness identifications like
11 this witness will come to say, could be possible.

12 Let me take you back inside La Tombola that faithful
13 night. It was a Saturday night. Almost midnight. This is a
14 pub. It's dark outside, dark inside. There were by many
15 estimates close to or even over a hundred people in this
16 little area. So this was a crowded place, very crowded place.
17 Imagine a bar in San Sebastian Street in January. Imagine
18 that crowd.

19 There was also, like sister counsel said, a horse
20 ride that took place that night, calbagata. So there were
21 horses, over 20 horses tied up to cars and fences around the
22 area.

23 At some point that night, close to midnight, some
24 armed men arrived wearing baseball caps kept low, and masks
25 covering their faces. By the way, Alexis was not one of

1 | those. He was not there.

2 | Masked, armed men arrived and opened fire, and all
3 | hell broke loose. You can imagine the scene. Horses going
4 | crazy. People running for their lives. Smoke filling the air
5 | from the bullets. People running for cover. And under those
6 | circumstances, there will be people here who will come and
7 | say, one or two persons, that they were able to identify
8 | Alexis.

9 | Now, remember, I told you already, of the majority of
10 | the people there, they're all from Sabana Seca. They grew up
11 | with Alexis. They would recognize him if they saw him, and
12 | they didn't see him that night. But the armed men went in.

13 | There's two more things you should know about Rufo
14 | and his role that night. Rufo will admit to you that he was
15 | inside the bar when the shooters came in. He will admit to
16 | you that he took out one of his guns, hid behind a column, and
17 | blindly emptied his gun into the people inside the bar.

18 | I told you no one will ever know who fired the bullet
19 | that killed them, but Rufo will admit to you that he emptied a
20 | gun blindly, not knowing who he was firing at. And now he
21 | wants to point the finger at Alexis.

22 | Rufo will also tell you that his brother Pedro and
23 | another individual who were inside the bar were firing back
24 | also. That was the scene at that bar that night.

25 | And finally, with regard to Rufo, you heard sister

1 counsel tell you that theory is something to the effect that
2 while -- at some point Alexis got mad at him, so he wanted to
3 settle the score, and he was coming that night to kill him.
4 Well, guess what the evidence is going to show? The shooters
5 walked right past Rufo. They didn't kill him. That's why
6 he's going to be here alive to tell us about that night.

7 Does that evidence make any sense to you? Or will
8 there be something else?

9 MS. DOMINGUEZ: Objection, argument.

10 THE COURT: Sustained. Argument. Sustained.

11 MR. REBOLLO: Yes, sir.

12 The man that, according to the Government's theory
13 was there to be killed, lived that night. The shooters, the
14 evidence will show, walked right past him.

15 Now, you may be wondering or asking yourself, well,
16 why Alexis? Why point the finger at Alexis? And that will be
17 a fair question.

18 And here's the answer. In 2009, Alexis was an easy
19 target, an easy scapegoat for anybody trying to divert
20 attention away from them. Why? Well, for that I have to take
21 you back a few more years and talk to you about another
22 individual that sister counsel mentioned and who you will meet
23 in this case, and his name is Braulio Ortiz-Rodriguez, also
24 known as Menor.

25 And Menor, the evidence will show, was really a

1 killer. You're going to meet a killer in this case. He's
2 going to be called by the Government to testify. Cold-blooded
3 killer. And in the early 2000s, he was the suspect in
4 several -- many murders in Sabana Seca.

5 And he got arrested with a weapon, and he began to
6 fight his case. And at one point, he will have to admit to
7 you that his attorney told him, look, the state authorities
8 are getting ready to file murder charges against you on one,
9 two, three, four, five, I don't know how many cases.

10 And at that point, he realized he was guilty of those
11 and he was going to be convicted of those. And he had to do
12 something quick, otherwise he would spend the rest of his life
13 in prison, which he, of course, did not want to do.

14 So what does he do? He decides at that point to
15 become a government cooperator, to become a witness, in
16 exchange of course for as lenient a sentence for getting back
17 out on the street, which he already is, by the way. And guess
18 who the evidence will show he blamed for all 13 murders he was
19 asked about? You guessed it. He blamed Alexis.

20 He admitted that he killed, but when he killed, he
21 said it was on Alexis' orders. His word against the rest of
22 the world. He involved Alexis in every murder he was asked
23 about. Alexis knew he was not guilty of these murders, and he
24 started to fight those murders. The evidence will show he
25 went to trial.

1 MS. DOMINGUEZ: Objection, Judge, as to what the
2 defendant knew.

3 THE COURT: Sustained.

4 MR. REBOLLO: Yes, sir. And the evidence will show
5 that he went to trial on the first murder, with -- remember,
6 the witness in all of the murders was the same individual and
7 only that individual. He goes to trial on that first murder
8 in state court in Bayamon. You'll see the transcript of that
9 particular hearing, and you will see that the Judge --

10 MS. DOMINGUEZ: Objection.

11 THE COURT: Sustained.

12 MR. REBOLLO: Yes, sir.

13 THE COURT: Improper opening.

14 MR. REBOLLO: Yes, sir.

15 You will see that the case was not going well for the
16 Government. For the state government I'm talking about, the
17 fiscalia de Bayamon. And at that point, Alexis is presented
18 with an offer, not his fault --

19 MS. DOMINGUEZ: Judge, I have to renew my
20 objection.

21 THE COURT: Sustained. Absolutely sustained.
22 Sustained.

23 MR. REBOLLO: May I be heard? I can proffer,
24 Judge.

25 THE COURT: Side bar.

1 (Bench conference held.)

2 THE COURT: Yes.

3 MR. REBOLLO: Your Honor, what I intend to tell the
4 jury is that the facts will show that Alexis, at that point,
5 is presented with an offer. The offer is for him to plead
6 guilty to all murders in exchange for a 12 year sentence. And
7 essentially that was an offer he couldn't refuse.

8 The evidence will show that if he fought the cases
9 and lost even one, he would do life in prison. But if he
10 accepted this, and -- he was presented with that choice, and
11 that's why he accepts the plea. He has since disavowed that
12 plea, and I say that, he disavowed it in prison records which
13 Your Honor has seen, also.

14 And, Your Honor, in your ruling, you entered an Order
15 saying that you -- the fact that he pled guilty does not mean
16 that he's guilty. It's just one fact to be considered in the
17 determination that the jury has to make, among all other
18 circumstances.

19 So I want to present the other circumstances. I want
20 to say that he pled guilty, and they have to decide, and in
21 the end they will understand that it was a plea of
22 convenience. That's my argument.

23 MS. DOMINGUEZ: Judge, my argument is not because
24 Alexis even pled guilty because of the -- of a deal, that's
25 the evidence in this case. My objection is counsel is

1 spinning the evidence, that he was being acquitted because the
2 quality of the evidence was poor. That is not the case.

3 In fact, counsel himself has indicated the only
4 witness was Braulio, and the fact is Alexis was convicted on
5 Braulio's testimony. And so that is what I have an objection
6 to. He is attempting to characterize the evidence in this
7 case, attempting to testify for his client, because this is
8 opening statement, Judge, and this is not evidence in this
9 case.

10 He has got to have a good faith basis for proffering
11 this evidence to the jury, and how is he going to sustain that
12 burden? The judge's comments made during the trial are
13 hearsay. They're inadmissible. And the judge's testimony has
14 no probative value in this case. And there have been numerous
15 misstatements of fact throughout this opening statement that I
16 have sat patiently by, but the fact is, for example, Alexis
17 has pled guilty to a multitude of firearm charges. The
18 suggestion -- I'm sorry. I'm sorry.

19 MR. RUHNKE: Microphone is on.

20 THE COURT: He's not being heard. He's not.

21 MS. DOMINGUEZ: The suggestion that he has never been
22 convicted of a firearm offense or never been found with a
23 firearm on is completely false, as many other misstatements of
24 fact have been. So I would suggest to the Court that I have
25 no problem with his proffering to the jury what the facts are.

1 The facts are that he pled guilty. That he was
2 offered a deal to 12 years, for 12 murders. I have no problem
3 with that. But to the extent that he is attempting to
4 characterize the quality of the case, the sentiments of the
5 Judge, and the reasons that the prosecution had to offer him
6 the deal, I object to that because he cannot sustain that
7 burden and it's inadmissible.

8 THE COURT: And those convictions have not been
9 collaterally attacked.

10 MR. HEGYI: Never, never.

11 THE COURT: Sustained. I will not allow that in the
12 opening.

13 MR. REBOLLO: Judge, just so the record is clear,
14 when I referred to the Judge, in the -- the state court judge,
15 in the transcript while Braulio Ortiz-Rodriguez is testifying,
16 the judge calls him a liar. He says he doesn't believe him.

17 MS. DOMINGUEZ: How is that admissible?

18 MR. REBOLLO: I am going to ask Braulio Ortiz about
19 that.

20 THE COURT: I'm sustaining the objection. I'm not
21 going to collaterally try those cases in this Court.

22 MR. REBOLLO: Can I say the guilty plea is only one
23 factor that they have against him?

24 THE COURT: If you want to say it, you can say that,
25 but believe me, I will not let you collaterally attack those

1 convictions. So take it from there.

2 (Bench conference concluded.)

3 MR. REBOLLO: May it please the Court?

4 THE COURT: Please.

5 MR. REBOLLO: Members of the jury, as I was saying,
6 we will present evidence to you to place this guilty plea in
7 perspective. You will see that it was an offer he couldn't
8 refuse at the time. You will see that it was a plea of
9 convenience.

10 MS. DOMINGUEZ: Objection.

11 THE COURT: Sustained.

12 MR. REBOLLO: And His Honor, Judge Fuste, will tell
13 you that the fact that he pled guilty does not mean in and of
14 itself that that means he was guilty of those offenses. He
15 will be --

16 THE COURT: I am not going to let you make that
17 statement in front of this jury. If you continue with that
18 line, I'm going to ask you to sit down.

19 MR. REBOLLO: Yes, sir.

20 THE COURT: Simple as that.

21 MR. REBOLLO: Yes, sir.

22 Now, members of the jury, in closing, the evidence
23 that you're about to hear starting today, it's going to be
24 horrible. You're going to hear about the most horrible facts
25 you're ever going to hear in your life. It's going to impact,

1 it's going to be horrific to you. It's going to move you to
2 tears.

3 You're going to hear about victims. You're going to
4 hear about surviving family members. You're going to hear
5 about the wounded who survived. It's going to be horrible.

6 And I can tell you right now that the Government will
7 prove that those murders, in fact, took place. Those crimes
8 occurred. Those crimes were committed. But that will not be
9 the end of the inquiry. That does not carry the day. Because
10 what the Government has to do, in addition to proving that
11 those murders occurred, is to prove that Alexis was the one
12 who committed them. And that, members of the jury, they will
13 not be able to do, for two reasons.

14 One, because he did not commit them. And, two,
15 because the evidence on which they will ask you to make that
16 conclusion will not be the credible, trustworthy evidence that
17 you will require in order to so conclude. It will be evidence
18 based on the testimony of convicted drug traffickers,
19 murderers, liars and cheats. People who will not be worthy of
20 your credibility.

21 And, members of the jury, when the Government brings
22 charges against an individual, particularly charges this
23 serious, it is entering into a contract in a way. They're
24 part of the contract.

25 MS. DOMINGUEZ: Objection.

1 THE COURT: Sustained. There's no contract.

2 Sustained. No contract.

3 MR. REBOLLO: Yes, sir.

4 If they don't prove, if they don't prove what they
5 have committed to proving, in other words, that Alexis was the
6 person behind these murders, your duty, your obligation, the
7 oath that you took this morning will be to find Alexis not
8 guilty of these charges. I trust that in the end, you will do
9 so as well. Thank you for your attention.

10 THE COURT: Thank you very much. Mr. Aguayo.

11 MR. AGUAYO: Yes, sir.

12 THE COURT: Mr. Aguayo, I have a question for you.

13 MR. AGUAYO: I'm sorry?

14 THE COURT: Would you please approach side bar a
15 minute? I have a question for you.

16 (Bench conference held.)

17 MR. AGUAYO: Yes, sir.

18 THE COURT: The jury's lunch is here. I need to know
19 whether you prefer to do it now or after lunch.

20 MR. AGUAYO: We can do it after.

21 THE COURT: Is that okay?

22 MR. AGUAYO: Yes. No problem. No problem.

23 (Bench conference concluded.)

24 THE COURT: I was informing Mr. Aguayo that the
25 jury's lunch is here, and I asked him if he preferred to do

1 his opening now or after lunch. Might as well do it after
2 lunch. It's one o'clock. Let's reconvene at 2:00 PM. Okay.
3 Thank you.

4 (At 12:54 PM, recess taken.)

5 (At 2:01 PM, proceedings reconvened.)

6 MR. RUHNKE: Your Honor.

7 THE COURT: Please, Mr. Ruhnke.

8 MR. RUHNKE: I don't know when you want these kind of
9 objections to be made, but the prosecution is about to play a
10 series of 911 tapes that were recorded from La Tombola that
11 evening. I don't object to most of them. This is not a
12 Crawford objection. I know the difference between a Crawford
13 911 call and a non-Crawford 911 call. But there's one call
14 that lasts about two minutes that's nothing but a woman
15 basically screaming hysterically that her mother has been
16 shot. Someone else has been shot.

17 To me, it has no probative value. I don't know what
18 we're proving, and I'd ask it be excluded as overly emotional.
19 And then there's a series of emotional, but not over-the-top
20 calls that we don't object to.

21 THE COURT: Well, let's do something. There are a
22 bunch of them you don't object to?

23 MR. RUHNKE: Yes.

24 THE COURT: And there's one you object to?

25 MR. RUHNKE: Yes.

1 THE COURT: I'll listen to it and let you know.

2 MR. RUHNKE: It's going to be the first witness.

3 MS. MATEO: It's the first witness, Your Honor.

4 THE COURT: You should have told me this.

5 MR. RUHNKE: Well, we just got it. We've been in
6 court every day. We've gotten thousands of pages of
7 discovery.

8 THE COURT: Well, perhaps you should just skip that
9 one.

10 MS. MATEO: Your Honor, we turned over the 911 calls
11 a while ago with the transcripts. There are over 20 911
12 calls, and I've only selected five that add up to less than
13 three minutes of calls.

14 THE COURT: Why don't you play the one for me before
15 about the jury comes in.

16 MS. MATEO: Yes, Your Honor.

17 MR. RUHNKE: Just by reason of background, we didn't
18 bring it earlier because the Government was planning on
19 bringing one in opening, then decided not to do that. So we
20 didn't have a chance to bring it to you.

21 THE COURT: How long are these calls?

22 MS. MATEO: There's five calls, that will all total
23 up to about three minutes.

24 THE COURT: Well, why don't you play them all, so I
25 can get a sense.

1 MS. MATEO: Okay.

2 THE COURT: Go ahead. Any time.

3 MS. MATEO: It's loading, Your Honor.

4 (At 2:03 PM, recording played into the record.)

5 MS. MATEO: Do you want me to restart it?

6 MS. DOMINGUEZ: Louder.

7 MS. MATEO: All right. Okay.

8 (At 2:04 PM, recording played into the record.)

9 THE COURT: That's one.

10 COURTROOM DEPUTY: No. Now.

11 (At 2:05 PM, recording played into the record.)

12 THE COURT: Is that the one?

13 MR. RUHNKE: Yes.

14 THE COURT: Let's hear the other ones.

15 MS. MATEO: Yes, Your Honor.

16 I'm going to put them in the order that they are in
17 the binder.

18 (At 2:06 PM, recordings played into the record.)

19 THE COURT: Mr. Ruhnke, I find that all of them are
20 more or less along the same vein. If you do not object to the
21 other ones, why should you object to the first one?

22 MR. RUHNKE: I think the one where the woman is over
23 the top and screaming and hysterical about her mother and all
24 of that is just over the top.

25 THE COURT: I don't think it's over the top. All of

1 | them are very scared and extremely confused. They can't even
2 | remember where the place is. They are all along the same
3 | vein, all of them.

4 | MR. RUHNKE: Yes, sir.

5 | THE COURT: Very well. Bring the jury in.

6 | And of course this is not being received for the
7 | veracity of any content. Is that clear?

8 | MS. MATEO: (Nodding head up and down.)

9 | THE COURT: A limited purpose. Whether true or not,
10 | this is the 911 calls.

11 | MS. MATEO: (Nodding head up and down.)

12 | THE COURT: I'll give a limiting instruction to the
13 | jury in that sense. What is the name of the first witness?

14 | MS. MATEO: Ms. Evelyn Medina.

15 | (At 2:13 PM, jury entered courtroom.)

16 | THE COURT: Mr. 16, I'm going to ask you if you can
17 | see the witness from there? If not, that chair has an
18 | adjustment, and we'll do it as soon as we can.

19 | Call your witness, please.

20 | MR. AGUAYO: I have to do an opening.

21 | THE COURT: I'm sorry, Mr. Aguayo. I'm very sorry.

22 | MR. AGUAYO: No problem, Your Honor.

23 | THE COURT: Opening statement, please. You should
24 | have reminded me before.

25 | MR. AGUAYO: May I begin?

1 THE COURT: Be my guest.

2 MR. AGUAYO: Ladies and gentlemen, my name is Jose
3 Aguayo, and I will be representing David Oquendo Rivas --
4 David, would you please stand up -- during the trial of this
5 case. And together with me, assisting me, will be Victor
6 Chico Luna, who is a young and upcoming attorney, and he'll be
7 helping me out in the defense of this case. Some days you'll
8 see him here, other days not. He'll be working out of the
9 office on various tasks and various things related to this
10 case.

11 David Oquendo Rivas, ladies and gentlemen, is
12 innocent. The evidence is going to show that he's innocent
13 of, not guilty of the accusations which are contained in
14 pieces of paper that the Honorable Court has told you is an
15 Indictment. Just pieces of papers that contain accusations,
16 nothing more. It's not evidence.

17 As the Judge says, this is the way that the trial
18 begins. Now, why is the evidence going to show that he's
19 innocent? It's because we're going to bring you evidence to
20 prove that he's been misidentified as having participated in
21 the events of La Tombola. Misidentified of having been
22 involved in these events, when, in fact, he was not at La
23 Tombola on that horrific night of October 17, 2009.

24 Now, the Government will undoubtedly bring witnesses
25 that were at La Tombola before you to say that David Oquendo

1 participated in these events. And as you listen to these
2 witnesses, I want you to picture in your mind the absolute
3 chaos, the incredible madness, that surrounded them during the
4 night of these events.

5 The prosecutor, Ms. Mateo, mentioned to you some of
6 the things that were happening. It was dark. It was a
7 multitude of people inside and outside La Tombola. There were
8 cars and horses all over the place.

9 There were deafening shots as she said being fired,
10 horrendous sounds of gun fire. Gunfire smoke in the air.
11 People running, running, running into each other, and
12 scattering in order to find a place to protect themselves and
13 take themselves out of harm's way.

14 Keep all this extreme chaos in mind when you listen
15 to these witnesses and you evaluate whether you should give
16 credibility or whether you should give belief to the
17 identifications, given the circumstances that are surrounding
18 them at that moment. And not just any beliefs, but beliefs
19 beyond a reasonable doubt.

20 Now, on the other side of the coin, as the Court has
21 told you, our Constitution makes clear that a defense does not
22 have to present any evidence at all. The principles of our
23 Constitution are clear. It's the Government that accuses and
24 therefore, the Government must prove its accusations beyond a
25 reasonable doubt. That's the way it works.

1 The defense, we do not have to do absolutely
2 anything. Absolutely nothing. The Government accuses. The
3 Government has to prove it and prove it beyond a reasonable
4 doubt. However, even though the Constitution does not require
5 it, we will bring you evidence that David Oquendo was not
6 involved in these events and was not present on that night.

7 The defense will bring you four witnesses. The first
8 are the wife, Joanna, the mother-in-law, Angela, and his
9 sister-in-law, Claribel. Now, I'm not going to give you all
10 the details as to what they're going to be saying, because as
11 the Judge says, the opening statement is not evidence.

12 You'll hear that when they take the stand. But in
13 essence, I just want to give you a preview. In essence, what
14 they'll be telling you and testifying at this trial is that
15 although David sometimes lived with his parents, in actuality,
16 he lived at the home with Joanna and his baby. And they live
17 in a small community, a small urbanization that's gated, that
18 has a security entrance.

19 That house belongs to David's mother-in-law, Angela,
20 who lives there with Joanna, with her daughter, and also her
21 other daughter, Claribel.

22 That night of October 17, 2009, David arrived at
23 approximately 9:00, 9:30. He parks his vehicle in front of
24 the residence. He goes inside, and there are the family
25 members. They talk for a while, and then David, his wife and

1 the baby go to their room where they retire. While in the
2 room, they watch TV. They use their computers.

3 At approximately 12:00 AM, 11:58, 12:00 AM, they hear
4 sounds, what sounds to them at first as fireworks. They get
5 up. They leave the room. And in the pasillo, in the hallway,
6 they meet the other family members who are discussing what
7 they have heard.

8 They go outside to see what's happening. And then
9 nothing's happening, so eventually some of the family members
10 go back inside. But David stays back outside with some of the
11 family members. And there they're talking, and he's smoking a
12 cigarette.

13 Now, I can understand that when you're talking about
14 family members and loved ones, you'll probably view them with
15 caution. Thankfully, there's another objective and unbiased
16 witness of great credibility who's going to give credence and
17 cooperation to what these family members are saying. This
18 person, his name is Luis Malave Garcia.

19 The evidence is going to show that Luis Malave is a
20 security guard at La Gaviotas, the Urbanization, the gated
21 community where David and Joanna live. He's not related to
22 David in any way, shape or form.

23 On November 17, 2009, he was working the night shift.
24 He'll testify that approximately 9:00, 9:30 PM, he sees David
25 Oquendo Rivas drive through the security gate. They speak

1 | briefly, and he sees that David heads towards his residence.

2 | Subsequently, Luis Malave does rounds around the
3 | Urbanization, security rounds. Each time he does his rounds,
4 | he sees David's car parked in front of the residence in
5 | exactly the same spot. Around 12:00 AM, he also hears what he
6 | first thinks are firearms, and then realizes that they're
7 | bullets, that there's gunfire.

8 | Shortly after that, he does his rounds again, and
9 | while doing his rounds, he sees David, David's vehicle in the
10 | same place, but more importantly he sees David and a family
11 | member outside talking. He stops. They speak together
12 | concerning what they had heard. And then shortly after that,
13 | Malave continues with his security rounds of the Urbanization.
14 | That's what the evidence is going to show.

15 | At the end of the trial, it will only be you, not the
16 | prosecutor, not me, not even this Honorable Court, it will be
17 | you that will decide who to believe.

18 | The defense is confident that at the end of this
19 | trial, you'll weigh the testimony of both the Government
20 | witnesses and the defense witnesses, and in so doing, come to
21 | the conclusion that, in fact, David Oquendo was not -- did not
22 | participate in the events of La Tombola and was not at La
23 | Tombola on that horrific night of October 17, 2009.

24 | And as a result of that, at the end of the case,
25 | you'll find David not guilty of the accusations that are

1 contained in these pieces of paper, that as I said before is
2 called an Indictment.

3 I thank you for your patience, and I look forward to
4 seeing you again at the end of this case so I can address you
5 again. Thank you.

6 THE COURT: Thank you. First witness, Evelyn
7 Medina.

8 MS. MATEO: Yes, Your Honor. The Government calls
9 Evelyn Medina.

10 THE COURT: Very well. Where is she?

11 MS. MATEO: She's in the witness room in the back.
12 They are going to get her now.

13 THE COURT: Okay.

14 MS. MATEO: Here she is.

15 THE COURT: Very well.

16 (At 2:24 PM, witness took the stand.)

17 COURTROOM DEPUTY: Please stand up and raise your
18 right hand.

19 Do you solemnly swear that the testimony you are
20 about to give in the case now before the Court would be the
21 truth, the whole truth, and nothing but the truth, so help you
22 God?

23 THE WITNESS: I do.

24 THE COURT: Ms. Mateo.

25 MS. MATEO: Thank you, Your Honor.

1 E V E L Y N M E D I N A,
2 called as a witness by the Government, having been sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MATEO:

6 Q. Please state your full name and spell your last name for
7 the record.

8 A. Evelyn Medina Conde.

9 Q. And where are you currently working?

10 A. The governing board of the 911 service.

11 Q. And what is your title?

12 A. Document administrator.

13 Q. And what are your responsibilities in that position?

14 A. To ensure that all documents and all recordings that come
15 out of our agency are true and exact copies.

16 Q. And what is the function of your agency?

17 A. To transfer emergency calls.

18 Q. And are you familiar with how the calls are kept and
19 maintained for your agency?

20 A. Yes.

21 Q. And are these calls recorded and kept in the regular
22 course of business for your agency?

23 A. Yes.

24 Q. And is the call that's recorded maintained a genuine call
25 or is it modified in any way?

1 A. No, it's genuine.

2 Q. And are the recordings made near or at the time of the
3 call as it's received?

4 A. At the time the call is received.

5 Q. Is every call recorded?

6 A. Every call is recorded.

7 Q. I'm now going to hand you what's been premarked as
8 Government's ID T-C-1, C-2, C-3 and C-5. And I ask you,
9 Ms. Medina, do you recognize them?

10 A. Yes.

11 Q. How?

12 A. They have my initials.

13 Q. And for each CD, can you tell us if the calls on that CD
14 are maintained in the regular course of business for your
15 agency?

16 A. Yes.

17 Q. And are these recordings or calls a true and accurate
18 copy of the original call maintained in your office in the
19 system?

20 A. That is correct.

21 Q. And were they modified in any way?

22 A. No. No, you can't -- no. I mean, the system does not
23 allow that.

24 MS. MATEO: At this time, Your Honor, the Government
25 moves these into evidence.

1 THE COURT: Any objection to the calls other than the
2 one that we discussed?

3 MR. RUHNKE: No objection.

4 THE COURT: Thank you very much. They are going to
5 be received.

6 (At 2:29 PM, Government Exhibit Numbers One through
7 Five admitted into evidence.)

8 THE COURT: Mark them as exhibits, with the numbers,
9 Diana.

10 COURTROOM DEPUTY: Yes.

11 THE COURT: Numbers what?

12 COURTROOM DEPUTY: One through Five.

13 THE COURT: One through Five. Go ahead.

14 BY MS. MATEO:

15 Q. Now, Ms. Medina, before handing them back, can you tell
16 us the dates of all those calls?

17 A. The dates? Yes. I mean, well, I have the -- well, the
18 dates of the calls, per se. It's -- they're registered by me.
19 So, I mean, the evidence here is genuine. I mean --

20 Q. Yes, but what date did those calls -- what date were
21 those calls received to the system?

22 A. Right now, how can I say? I mean, I just don't -- I
23 would have to review the documents to tell you.

24 Q. Do you have those documents with you?

25 A. Yes, I do have them.

1 THE COURT: Please do.

2 THE WITNESS: Okay. This was on October 17.

3 THE COURT: Year?

4 THE WITNESS: 2009.

5 BY MS. MATEO:

6 Q. And also can you tell us, starting with the first CD,
7 which is marked one, can you tell us what time the calls were
8 made?

9 A. At 11:48 PM. Number two was at 11:48. Number four was
10 at 11:47. Number five at 11:47. And at 11:48.

11 Q. And is this AM or PM?

12 A. PM.

13 Q. And did you have a chance to review transcripts relating
14 to these calls?

15 A. That is correct.

16 Q. I'm now handing the witness what's been marked as T1.
17 It's T1 through T5.

18 A. Yes, I compared them.

19 Q. And are they fair transcriptions of the Spanish heard on
20 the calls?

21 A. Yes, that is correct.

22 MS. MATEO: Permission to publish at this time. Your
23 Honor, we have transcripts for the jury that at this time, if
24 we could hand them out?

25 THE COURT: Please.

1 MS. MATEO: And Your Honor, at this time we're moving
2 what's been marked Government's ID T-1 through five into
3 evidence.

4 THE COURT: Any objection to the transcripts?

5 MR. RUHNKE: No objections. They're coming in, I
6 assume, as an aid to the jury, not substantive evidence.

7 THE COURT: Right.

8 Ladies and gentlemen of the jury, let me explain how
9 we do this. What is really in evidence is the CDs that have
10 the recordings, the calls, okay? The transcripts are a tool
11 that we're going to use in open court to hear the tapes.

12 Any discrepancy between the tape and the transcript,
13 you're going to go by what the tape says. The tape is the one
14 that is in evidence. You understand that?

15 Those transcripts are simply an aid. They will not
16 be evidence as such in the case. It's the tapes. Very well.

17 MS. MATEO: Also, Your Honor, I'm handing a binder to
18 the interpreter.

19 THE COURT: And you will notice also that those
20 transcripts have Spanish on one side and English translation
21 on the other. If there is any discrepancy between the English
22 and the Spanish, we go by the Spanish, because the recordings
23 were made in Spanish. Is that clear?

24 All of you are fully bilingual, so you have to
25 understand it in the context and the language in which they

1 were spoken.

2 Question.

3 MS. MATEO: At this time we're publishing -- well,
4 Government's Exhibit One.

5 (At 2:35 PM, recording played into the record.)

6 THE COURT: That's Exhibit One.

7 MS. MATEO: Yes, Your Honor.

8 THE COURT: Very well.

9 MS. MATEO: Moving now to Exhibit Two.

10 (At 2:36 PM, recording played into the record.)

11 MS. MATEO: Now publishing Exhibit Three.

12 (At 2:37 PM, recording played into the record.)

13 MS. MATEO: Now publishing Government Exhibit Four.

14 (At 2:38 PM, recording played into the record.)

15 MS. MATEO: Now publishing Government's Exhibit
16 Five.

17 (At 2:41 PM, recording played into the record.)

18 MS. MATEO: No more questions for this witness.

19 THE COURT: No questions.

20 Members of the jury, I'm receiving this not for the
21 veracity of the content, because these persons are not here to
22 testify, the ones who were called, but simply as evidence of
23 the calls that were received. From whether the description
24 there contained is true, correct, incorrect is a matter that
25 we just simply don't know. These were the calls that were

1 received, period. Okay?

2 Any cross?

3 MR. RUHNKE: Not from us, Your Honor.

4 MR. AGUAYO: No, Your Honor.

5 THE COURT: Thank you very much, ma'am. You are now
6 excused.

7 (At 2:42 PM, witness excused.)

8 THE COURT: Next witness.

9 MS. DOMINGUEZ: Your Honor, the Government calls
10 Jannette Maysonet. She's outside.

11 (At 2:43 PM witness took the stand.)

12 COURTROOM DEPUTY: Please raise your right hand.

13 Do you solemnly swear that the testimony you are
14 about to give in this case is the truth, the whole truth and
15 nothing but the truth, so help you God?

16 THE WITNESS: Yes.

17 MS. DOMINGUEZ: May I proceed, Your Honor?

18 THE COURT: Please.

19 J A N N E T T E M A Y S O N E T N E G R O N,
20 called as a witness by the Government, having been sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. DOMINGUEZ:

24 Q. Good afternoon. Please state your name.

25 A. Jannette Maysonet Negron.

1 Q. Ms. Maysonet, back in 2009, where did you live?

2 A. Sabana Seca.

3 Q. And did you grow up in Sabana Seca?

4 A. Yes.

5 Q. Are you married?

6 A. I live with somebody.

7 Q. And do you have any children?

8 A. Yes.

9 Q. How many?

10 A. Four.

11 Q. Ma'am, when you were growing up in Sabana Seca, did you
12 ever meet an individual by the name of Wilfredo Sempritt
13 Santana, also known as Rufo?

14 A. Yes.

15 Q. And could you tell us how it is that you came to know
16 him?

17 A. Well, I've known him since my youth, because he was from
18 there, from the same ward.

19 Q. And did Rufo also live in Sabana Seca?

20 A. Yes.

21 Q. And did you know what line of work Rufo was in?

22 A. The underworld.

23 Q. And what do you mean by underworld?

24 A. That he worked in drugs.

25 Q. Now, let me ask you, Ms. Maysonet, did you ever have a

1 drug addiction problem?

2 A. Yes.

3 Q. And could you tell us when that was?

4 A. Well, it was 13 years ago.

5 Q. And could you tell us what kind of drugs you're addicted
6 to?

7 A. Cocaine, heroin, and crack.

8 Q. And do you still have a drug addiction problem?

9 A. No. I've been rehabilitated for 13 years now.

10 Q. Now, when you were suffering from your drug addiction,
11 did you also on occasion sell drugs?

12 A. Yes.

13 Q. And why did you do that?

14 A. To be able to pay for my addiction problem.

15 Q. And did you ever sell drugs for Rufo?

16 A. No.

17 Q. Did you ever buy drugs from him?

18 A. No.

19 Q. Now, during the time that you were growing up in Sabana
20 Seca, did you have occasion to know a person by the name of
21 Alexis Candelario Santana?

22 A. Yes.

23 Q. And was this person known by any nickname?

24 A. I knew him as Alexis.

25 Q. And how is it that you knew him?

1 A. Because when I was studying in junior high school, I met
2 his cousins, Yanet Martinez and Neida Martinez. And I was
3 their best friend, and I would go to his house.

4 Q. And in a given week, how many times would you say you
5 visited Alexis' house?

6 A. Every day, and until late at night.

7 Q. And as you grew up, did you maintain that friendship with
8 Alexis' cousins?

9 A. Yes.

10 Q. And did you continue to see Alexis?

11 A. No. I stopped seeing him for a couple years.

12 Q. Do you remember when that was?

13 A. No.

14 Q. And did you know what type of business Alexis was in in
15 Sabana Seca?

16 A. Drugs.

17 Q. And how did you know that he was in the drug business?

18 A. Because he was the owner of the point, drug point.

19 Q. Ms. Maysonet, when was the last time that you saw Alexis,
20 if you can recall?

21 A. I don't remember.

22 Q. Has it been years?

23 A. Years, yes.

24 Q. If you saw him again, do you think that you'd be able to
25 recognize him?

1 A. Yes.

2 Q. Well, could you tell the members of the jury whether you
3 see Alexis Candelario Santana in the courtroom here today?

4 A. Yes.

5 Q. Would you please point him out by describing an article
6 of his clothing?

7 A. He's wearing a white shirt and like a blue jacket.

8 THE COURT: Go ahead.

9 MS. DOMINGUEZ: May the record reflect that the
10 witness has made the identification?

11 THE COURT: Sure.

12 BY MS. DOMINGUEZ:

13 Q. Now, Ms. Maysonet, were you familiar with a business in
14 Sabana Seca by the name of La Tombola?

15 A. Yes.

16 Q. And what was that business?

17 A. It was an establishment where you played pool, listened
18 to music, beers were sold. It was like a pub.

19 Q. And where was it located?

20 A. At the corner of Los Bravos, which is adjacent to
21 Progreso Street.

22 Q. And was that an area that was familiar to you?

23 A. Yes.

24 Q. Now, let me ask you if on October the 17th, 2009, you
25 visited La Tombola?

1 A. Yes.

2 Q. And for what purpose did you visit La Tombola?

3 A. There was an inauguration of the establishment.

4 Q. And did you know who the owner of La Tombola was?

5 A. Well, we only -- well, we all knew La Tombola as the
6 owner being Rufo. That's how I know him.

7 Q. And before the date of the grand opening, on October the
8 17th, 2009, can you tell us, if you know, how long that
9 business had been open and operating under the name La
10 Tombola?

11 A. About two weeks.

12 Q. Do you recall, Ms. Maysonet, approximately what time you
13 arrived?

14 A. On the day of the events?

15 Q. On October the 17th, 2009.

16 A. It was like 8:00 something.

17 Q. At night?

18 A. Yes.

19 Q. And did you go alone or was someone with you?

20 A. I went with my twins.

21 Q. And how old were your twin daughters at that time?

22 A. Eight, nine, I don't remember well.

23 Q. And when you arrived at approximately 8:30 PM, can you
24 tell us how many people were in the outside area of the
25 business?

1 A. There were several people, about a hundred, more or less.

2 Q. Now, when you say -- when you refer to the number 100,
3 are you referring only to the people outside or to people
4 inside the establishment as well?

5 A. The entire place.

6 Q. And did you also enter the business?

7 A. Yes.

8 Q. Now, when you first arrived at 8:30, what did you do?

9 A. I said hi to my comadre, my child's godmother, Carmen
10 Maria. She was in the alleyway in her parents-in-law's house.

11 Q. Now, so that we get a sense of where that is in relation
12 to the business, can you explain to us how far from La Tombola
13 you two were speaking?

14 A. There was a street between us.

15 Q. So could you say that that was across the street from La
16 Tombola?

17 A. Right in front.

18 Q. Immediately across the street?

19 A. Yes. I can explain more or less.

20 Q. Go ahead.

21 A. In example, this is the alley where the street is. And
22 the road was here, and more or less where the jury is, that's
23 where La Tombola was located.

24 MS. DOMINGUEZ: Indicating, Your Honor, the witness
25 is pointing to the back wall and then to the jury wall.

1 BY MS. DOMINGUEZ:

2 Q. Now, did you know a person by the name of Carmen Sempritt
3 Santana?

4 A. Yes.

5 Q. Do you know her by any name?

6 A. Minie.

7 Q. And who is she?

8 A. Rufo's sister.

9 Q. And did you see her that evening at La Tombola?

10 A. Yes.

11 Q. Where did you see her?

12 A. She's the one who was selling fritters at this little
13 establishment they set up next to La Tombola outside.

14 Q. Okay. Now, if you were facing La Tombola, the building,
15 would the fritura stand be to the right or the left of the
16 building?

17 A. My right.

18 Q. Now, how long did your daughters remain with you that
19 evening in La Tombola?

20 A. They left around 11:00, about three hours.

21 Q. And what did you do when they left?

22 A. I ordered some fritters from Minie, and after I ordered
23 those, I then crossed the street to where Carmen Maria was.

24 Q. And then what happened?

25 A. Minie signaled to me that the fritters were ready, and I

1 told Carmen Maria the fritters are ready. And she asked me to
2 bring them over to her, her fritters. And I asked her to come
3 with me to go buy the fritters, because she was pregnant and
4 not invalid --

5 THE COURT: Disabled.

6 THE WITNESS: Disabled. Thank you. Corrected.

7 MS. DOMINGUEZ: Ms. Maysonet, may I offer you some
8 water? May I, Your Honor?

9 THE COURT: Yes.

10 THE WITNESS: Yes. Gracias.

11 BY MS. DOMINGUEZ:

12 Q. Are you okay to continue, Ms. Maysonet?

13 A. Yes.

14 Q. And after you told Carmen Maria to go pick up the
15 frituras with you, what happened?

16 A. She just started laughing and came with me.

17 Q. And do you remember approximately what time that was?

18 A. Around 11:50. I don't know.

19 Q. And did you and Carmen Maria, in fact, go and pick up the
20 frituras?

21 A. Yes. The both of us actually went to the place where
22 they were selling the fritters.

23 Q. And tell us what happened.

24 A. Okay. So well, we got to the place where the fritters
25 were sold, and Minie handed over to me the pastelillo.

1 THE COURT: Turnover.

2 THE WITNESS: Turnover. And so I gave Carmen Maria
3 her turnover, when I heard somebody running behind me. And
4 when I looked behind me, I saw this man with a long rifle
5 running behind me. And when I observed him, I yelled, Maria,
6 careful.

7 BY MS. DOMINGUEZ:

8 Q. To your comadre?

9 A. Yes. So when I looked and saw this guy coming, running
10 with this long rifle, and told Maria to be careful, I ran off.
11 And so when I started running off, I ran into this boy in
12 front of me.

13 Q. Did you know who the boy was?

14 A. Yes.

15 Q. Who was he?

16 A. Pedro's son.

17 Q. And who was Pedro?

18 A. Rufo's brother.

19 Q. So Rufo's nephew?

20 A. Yes.

21 Q. And how old was this child at the time, if you know?

22 A. He was little, three, four. I don't remember.

23 Q. And what did you do when you saw the child?

24 A. The boy was lying face down. And running, I grabbed him
25 beneath his arms and kept running with him.

1 Q. And where did you run to?

2 A. To the other street on which Tombola was.

3 Q. To a street adjacent to it?

4 A. The thing is that I was born and raised on the street
5 that's behind La Tombola. So when -- so when the events took
6 place, I knew more or less where I could run to, where I could
7 go to get away. And that was the street behind La Tombola
8 where my foster mother lived.

9 Q. And where did you end up with this child?

10 A. I arrived at my aunt's house, my foster mother's house.

11 Q. And then what happened?

12 A. I stayed there until I stopped hearing shots, and I
13 stayed there until I heard no more shots and I started hearing
14 the sirens of ambulances and police cars.

15 Q. And when you heard the ambulances, what, if anything, did
16 you do?

17 A. I didn't understand. Could you repeat?

18 Q. What did you do after you heard the ambulance?

19 A. Okay. I left my aunt's house and headed over to hand
20 over the boy that I had in my hands.

21 Q. Okay. And at that time were you able to see Carmen
22 Maria, your comadre?

23 A. Yes. She was on her way to an ambulance with the father
24 of her children.

25 Q. And what did you do?

1 A. I handed the boy that I had in my hands over to his mom.
2 And I went with Carmen Maria in the ambulance, because on that
3 day, they had also killed at the same place my stepfather's
4 compadre.

5 THE INTERPRETER: Compadre's stepfather.

6 BY MS. DOMINGUEZ:

7 Q. Your compadre's stepfather?

8 THE INTERPRETER: The interpreter stands corrected.

9 My compadre's stepfather. Thank you.

10 BY MS. DOMINGUEZ:

11 Q. So Carmen's stepfather had been killed?

12 A. Yes.

13 Q. And because of that, her husband couldn't accompany her?

14 A. Because his mom got very bad, bad, and he had to stay
15 there with her.

16 Q. And so you went to the hospital with Carmen Maria?

17 A. Yes.

18 Q. Now, let me take you back to the moment in time at
19 approximately 11:50 PM, when you felt this person behind you
20 and you told us that you turned. First of all, could you tell
21 us how far you were from this individual when you saw him, if
22 you can estimate in feet?

23 A. About five feet, six feet from where I was.

24 Q. Now, you've told us that this happened late at night.

25 Was there lighting in the area?

1 A. Yes.

2 Q. Where was the light coming from in relation to where you
3 were at the fritura stand?

4 A. It was right there in the front, like on top, like above
5 the house, do you call it, the display window of where the
6 fritters were.

7 Q. And when you turned to look at this individual, could you
8 tell us whether you were able to see his face?

9 A. Yes.

10 Q. Did you make eye contact with the person?

11 A. Yes.

12 Q. Can you describe to us how that person was dressed that
13 evening?

14 A. He wore a black cap, a black shirt, jeans. And this was
15 so quick that I can't be sure if these were black colored or
16 blue jeans, but I -- what I noticed most was the long rifle he
17 had, and his face when he looked toward where I was, when he
18 heard me shout out to Maria, be careful. He looked to where
19 we were and started heading over to where we were.

20 Q. And after he looked at you, when you say Maria, be
21 careful, what happened? What did this individual do, if
22 anything?

23 A. He turned over to where we were and started shooting.

24 Q. Now, we've asked you to describe the person's clothing.
25 Can you also describe for the members of the jury the person's

1 face that you saw that evening?

2 A. This was a white-skinned person. He was white and a --
3 quite a wide nose, and kind of a wide face, like a wide face.

4 Q. Now, when you turned to look at that individual, were you
5 able to see if Carmen turned to look as well? When you turned
6 to look at this individual, were you able to tell if Carmen
7 Maria turned as well?

8 A. I didn't pay attention.

9 Q. Now, I'd like to go back for the moment to the hospital
10 where you accompanied Carmen Maria that evening.

11 MS. DOMINGUEZ: Your Honor, I'd like to flag a
12 potential issue for the Court, if I might.

13 THE COURT: Yes.

14 (Bench conference held.)

15 MS. DOMINGUEZ: Judge, this has been flagged in
16 discovery to the defense, but I proffer to the Court that this
17 witness will testify that another Government witness by the
18 name of Yanet Martinez called her that evening at the
19 hospital.

20 And that that person asked her about the incident of
21 whether her son was alive, and also told her, it was Alexis,
22 wasn't it? It was Alexis. Suggesting to her that it was
23 Alexis. And uttered words to the fact that, we have to get
24 him for this.

25 MR. RUHNKE: What?

1 MS. DOMINGUEZ: We have to get him for this.

2 MR. AGUAYO: Who was saying this?

3 MR. DOMINGUEZ: Yanet Martinez called Jannette
4 Maysonet. This was turned over in discovery. While I
5 understand there may be hearsay implications, I fully
6 understand counsel will go into this in cross-examination. So
7 I wanted to flag this for the Court and make sure it does not
8 draw an objection.

9 MR. RUHNKE: It will not draw an objection. And has
10 anyone moved to have sequestration?

11 MS. DOMINGUEZ: Our witnesses are not here, but we'd
12 be happy to join in that.

13 THE COURT: Well, if you are going to stipulate
14 sequestration of witnesses, since I don't know who is who, you
15 have to get these people and tell them they can't be in this
16 courtroom and they have to be somewhere else.

17 MS. DOMINGUEZ: Absolutely. Just for the Court's
18 information, the only witness present in the courtroom is our
19 case agent.

20 MR. RUHNKE: That's fine.

21 THE COURT: That's fine.

22 MR. RUHNKE: And sequestration is not just being in
23 the courtroom, it's not discussing the case, et cetera, et
24 cetera.

25 MS. DOMINGUEZ: Absolutely.

1 THE COURT: Absolutely.

2 MS. DOMINGUEZ: Absolutely.

3 THE COURT: I agree with that.

4 MR. RUHNKE: Okay. Thank you.

5 (Bench conference concluded.)

6 THE COURT: Well, let's proceed.

7 MS. DOMINGUEZ: Thank you, Your Honor.

8 BY MS. DOMINGUEZ:

9 Q. When you were in the hospital, did you receive a call
10 from a person by the name of Yanet Martinez?

11 A. Yes.

12 Q. Who is Yanet Martinez?

13 A. Alexis' cousin and Rufo's cousin.

14 Q. So are Rufo and Alexis cousins as well?

15 A. Yes.

16 Q. And could you tell us as to the best of your recollection
17 what Yanet told you over the phone that evening?

18 A. They killed Cayon.

19 Q. And who was Cayon?

20 A. Her son.

21 Q. Did she say anything else to you?

22 A. She told me that they had killed her Cayon, and I
23 guaranteed to her that Cayon was alive.

24 Q. Why did you think Cayon was alive?

25 A. Because Cayon and Wichí (ph) were ahead of me when I was

1 running.

2 Q. And did Yanet Martinez say anything else to you with
3 respect to who may have been responsible for that incident and
4 the death of her son?

5 A. She told me, Alexis killed my son.

6 Q. Do you recall what else she told you?

7 A. Not that day, no.

8 Q. And did there come a time when Yanet called you again to
9 discuss the events of La Tombola? Or did you have an
10 opportunity to speak to her face-to-face?

11 A. Yes.

12 Q. When was that?

13 A. I can't specify a date. It was several days after the
14 guys had been buried and all those people had been buried.

15 Q. Would you say more or less a week after the incident at
16 La Tombola?

17 A. What was the question again?

18 Q. Was it within the week after the La Tombola shooting?

19 A. More or less that happened -- can I explain?

20 Q. Sure.

21 A. I went several days, I mean a week, two weeks after to
22 visit Yanet as I always did. And around those dates, there
23 had been an article in the newspaper indicating that Rufo had
24 given a statement against Alexis and saying that it had been
25 Alexis who had committed these acts. So she started asking me

1 | what had happened that day.

2 | Q. And by she, you're referring to Yanet?

3 | A. Yes, there was her and Neida Martinez, her sister.

4 | Q. And what did she tell you?

5 | A. She was asking me why I had guaranteed to her at all
6 | times that Cayon was alive. So I explained to her at that
7 | point, what I had told her before, that he was ahead of me
8 | running. And she asked me if I saw Alexis that day.

9 | Q. And what did you tell her?

10 | A. That I had not seen Alexis, at least me, I didn't see
11 | Alexis that day. I saw another person. And she told me, she
12 | made a comment to me that I shouldn't be afraid of Alexis,
13 | that he was in jail already, and that I had to tell the truth.
14 | Because in all this she thinks I'm saying I didn't see Alexis
15 | because I am afraid of him.

16 | Q. And did you see Alexis that night at La Tombola?

17 | A. Well, I did not see him.

18 | Q. Now, how many people did you see either shooting or
19 | holding any type of firearm on the evening of October 17,
20 | 2009?

21 | A. I heard several shots, but I only saw one person.

22 | Q. When you say several shots, can you try to be more
23 | precise? Tell us what you heard and for how long you heard
24 | the shots ring out.

25 | A. It was several minutes. I could hear boom, boom. Ta,

1 ta, ta, ta, ta.

2 Q. So were the shots in close succession or were they -- was
3 there a pause between them?

4 A. No. This was horrible. Ever since they started
5 shooting, they kept shooting nonstop. A lot.

6 Q. Do you know the difference between the way an automatic
7 weapon shoots and the way, let's say, a pistol shoots, a
8 non-automatic pistol?

9 A. Yes.

10 Q. What's the difference? Your understanding.

11 A. That automatic weapons shoot more quickly, and discharge
12 more bullets than the other ones that shoot more slowly.

13 Q. And based on what you heard, are you able to tell us
14 whether you feel that what you heard was automatic weapons
15 firing or non-automatic?

16 A. There were all kinds. You could hear all kinds.

17 Q. And what, if anything, did that indicate to you with
18 respect to the number of people that were shooting?

19 A. There were several people.

20 Q. So did that indicate to you that there was more than the
21 one shooter that you had seen?

22 A. Yes.

23 Q. But you didn't see any of those people?

24 A. No.

25 Q. And therefore, you don't know who they were?

1 A. No.

2 Q. Now, do you know if Alexis was there that evening at La
3 Tombola?

4 A. I don't know.

5 Q. Now, let me show you --

6 MS. DOMINGUEZ: May I approach, Your Honor?

7 BY MS. DOMINGUEZ:

8 Q. Government's Identifications T-L1-2 through L-8. Take a
9 look at those and let me know when you're done. Are you done?

10 A. Yes.

11 Q. Now, ma'am, in 2011, were you interviewed by special
12 agents of the Federal Bureau of Investigation near the Federal
13 correction facility, MDC?

14 A. Yes.

15 Q. In an office that was near to the jail?

16 A. Yes.

17 Q. And when you spoke with the agents, did you tell them,
18 did you share with them your knowledge about the events of La
19 Tombola?

20 A. Did I explain to them what happened that day?

21 Q. Yes.

22 A. What I saw that day? Yes. Yes.

23 Q. And did you tell them that you got a look at one of the
24 shooters?

25 A. Yes.

1 Q. Now, I'd ask you to take a look at the three documents
2 that are in front of you that are marked as T-LU-2, 2-A and
3 2-B. And let me ask you whether you recognize each one of
4 those documents as a document that you've seen before and are
5 familiar with?

6 A. Yes.

7 Q. And could you tell us generally what those documents are?

8 A. These are pictures of several people.

9 Q. Okay. And did the agent show you those photos as part of
10 their interview in 2011?

11 A. Yes.

12 Q. Now, are each one of those documents in substantially the
13 same condition as when the agents showed them to you?

14 A. I was shown a picture previously that looked dark. These
15 are the pictures that I identified.

16 Q. But the picture -- the photo that you had been shown
17 which you say was dark, was it by Federal agents or by the
18 local police?

19 A. Local police.

20 Q. I'm not asking you about that for the moment, although
21 we'll get to that. My question is whether those were, in
22 fact, the photos that the agent showed you in the condition
23 that they are in court today?

24 A. Yes.

25 MS. DOMINGUEZ: Your Honor, we move for the

1 admissibility of --

2 MR. AGUAYO: No objection, Your Honor.

3 THE COURT: Very well, no objection. They're going
4 to be exhibits.

5 COURTROOM DEPUTY: 6, 7 and 8.

6 THE COURT: 6, 7 and 8.

7 (At 3:27 PM, Government Exhibits 6, 7 and 8 admitted
8 into evidence.)

9 THE COURT: Would you please put a 6, 7 and 8 on the
10 corner there so we can know what we're referring to
11 afterwards?

12 MS. DOMINGUEZ: Yes, Your Honor.

13 MS. DOMINGUEZ: Your Honor, may we publish?

14 THE COURT: Please.

15 BY MS. DOMINGUEZ:

16 Q. Now, I'd ask you to look at the monitor that's in front
17 of you. Are you able to see Exhibit 7 that's projected there?

18 A. Yes.

19 Q. And this was one of the documents that they showed you
20 that has six photographs; is that correct?

21 A. Yes.

22 Q. And now projecting eight. Was this also a series of six
23 photos that they showed you in a separate document?

24 A. Yes.

25 Q. Now, when the agents showed you those two documents,

1 seven and eight, what, if anything, did you say to them, if
2 you can recall?

3 A. That I wanted to see the picture more clearly, a bit
4 larger, because it's small.

5 Q. And when you made that request, did they then show you
6 what's marked now in evidence as six?

7 A. Yes.

8 Q. And were you able to select someone from the five
9 photographs on that page?

10 A. Yes.

11 Q. Who did you select? The person --

12 A. The one that's marked and has my initials next to it.

13 Q. And the circle around the person's face, do you know who
14 placed that there?

15 A. I did.

16 Q. And did you write anything next to the picture?

17 A. Excuse me?

18 Q. Did you write anything to where I'm pointing?

19 A. That's my handwriting.

20 Q. And what does that say?

21 A. He had a long rifle.

22 Q. Now, this individual that you picked out as the person
23 who you saw shooting at La Tombola on October 17, 2009, had
24 you ever seen him before?

25 A. No.

1 Q. Did you know his name?

2 A. No.

3 Q. Did you have any reason to implicate him in that event,
4 other than the fact that you saw him?

5 A. No.

6 Q. Now, I'm going to ask you, Ms. Maysonet, to tell us
7 whether in this courtroom, here today, you see the person that
8 you picked out, that you selected in Government's Exhibit 6,
9 in the courtroom here today, as the person whom you saw on the
10 evening of October the 17th, 2009, with the long firearm, the
11 long rifle, who shot at you?

12 A. Yes.

13 Q. Could you point to the person and describe an article of
14 his clothing?

15 A. A striped, long sleeve shirt.

16 MS. DOMINGUEZ: May the record reflect that the
17 witness has identified the defendant, David Oquendo Rivas.

18 THE COURT: Very well.

19 BY MS. DOMINGUEZ:

20 Q. Now, before you were interviewed by the FBI in 2011, do
21 you recall whether you were also interviewed by local police
22 from the Police of Puerto Rico with respect to the Tombola
23 incident?

24 A. What was the question again?

25 Q. Did the Police of Puerto Rico also interview you

1 regarding the events at La Tombola?

2 A. Yes.

3 Q. And was that before or after the FBI interviewed you?

4 A. Before.

5 Q. And can you tell us to the best of your recollection,
6 approximately how close to the incident of La Tombola, how
7 close was the incident of October 17, 2009, to that interview?

8 A. It was several weeks after when Carmen Maria was
9 discharged.

10 Q. Okay. And did you also share with the Police of Puerto
11 Rico what you knew about that night at La Tombola?

12 A. Yes.

13 Q. And did you also tell them that you had seen the face of
14 one of the shooters?

15 A. Yes.

16 Q. And did the Police of Puerto Rico show you some booking
17 photos?

18 A. I was shown -- I was shown a binder similar to the one on
19 the table here that contained a series of pictures.

20 Q. Okay. And do you recall how many pictures you saw or how
21 many photos of, pages of photos you saw?

22 A. This was a -- had quite a lot -- this was quite big, this
23 photo album.

24 Q. Could you indicate with your hand how wide that notebook
25 was?

1 A. (Witness indicating.)

2 Q. Indicating for the record --

3 A. And each page had about six pictures.

4 MS. DOMINGUEZ: Indicating for the record about, I
5 would say, about two or three inches.

6 MR. RUHNKE: Fair enough.

7 THE COURT: More or less.

8 BY MS. DOMINGUEZ:

9 Q. Okay. Now, were you able to identify from the
10 photographs you were presented with a photograph of the person
11 who shot at you on October 17, 2009?

12 A. No, I started by looking over the book. And at some
13 point I told them -- I pointed to a -- I pointed to a picture
14 in the book and told them that that person looked a lot like
15 the person I saw that night. He looked very much like the
16 person, but that was not him because he was dark skinned and
17 the guy I saw was white.

18 Q. Now, the person that you selected on Government's Exhibit
19 6 that you circled his face, as the person who shot at you
20 that evening in La Tombola, was that person's photograph
21 included in the photographs that the Police of Puerto Rico
22 showed you?

23 A. No.

24 Q. Now, let me ask you, Ms. Maysonet, whether you have ever
25 had occasion of being interviewed by an investigator

1 associated with the defense in this case?

2 A. Yes.

3 Q. And did that happen once or more than once?

4 A. More than once.

5 Q. Would you tell us an estimate of how many times?

6 A. Countless times. I can't remember how many times.

7 Eight, seven.

8 Q. Now, during those interviews -- do you remember the name
9 of the investigator?

10 A. Yes.

11 Q. Could you share with us his name?

12 A. Mr. Carlos Eliezer.

13 Q. And during those interviews, in one or more of those
14 interviews, did this investigator ever ask you or present to
15 you a photo lineup and ask you to identify the person that you
16 saw shooting at La Tombola on October 17, 2009?

17 A. Yes.

18 Q. How many times did that happen, once or more than once?

19 A. That he showed pictures to me?

20 Q. Yes.

21 A. Once.

22 Q. And can you tell us whether the photograph of the person
23 that you have identified as the shooter, as one of the
24 shooters that night that you circled his face here in
25 Government's Exhibit 6, whether that photograph was included

1 in the series of photographs that he showed you?

2 A. Can I explain?

3 Q. Well, could you -- absolutely you can explain, but could
4 you tell us first whether a photo of that person was included
5 in the photos that he showed you?

6 A. Yes.

7 Q. And did you select that person upon being shown the photo
8 array?

9 A. No.

10 Q. Why not?

11 A. Because we were getting close to the date where I had to
12 come here, and I had had so many interviews with the attorney
13 already. And for security reasons, I didn't want to tell him
14 that he was included in those pictures, because he was Alexis
15 Candelario's investigator.

16 Q. But you weren't identifying Alexis Candelario. You were
17 identifying someone else who was the person that you saw
18 shooting at you that evening.

19 A. I was afraid for my security, my safety.

20 Q. You know, I just have a couple more questions, and then
21 I'll be done with my direct examination. Your comadre, Carmen
22 Maria, who you accompanied to the hospital, was she injured on
23 October -- the evening of October the 17th?

24 A. Carmen Maria?

25 Q. Yes.

1 A. Yes.

2 Q. Do you know where she was injured?

3 A. She received two bullet impacts on her gluteus, which one
4 of the bullets caused the death of her baby girl. The other
5 bullet injured her uterus, her bladder.

6 THE COURT: Intestines.

7 THE WITNESS: And the intestines.

8 BY MS. DOMINGUEZ:

9 Q. And how about you, Ms. Maysonet, were you injured at all
10 on that evening of October the 17th?

11 A. No. I mean, I received -- and this is according to the
12 nurse, because I didn't treat myself. But I guess the very
13 powder, kind of scratched my leg, but I didn't get treated for
14 any wound.

15 THE INTERPRETER: Gun powder.

16 THE WITNESS: Gun powder.

17 MS. DOMINGUEZ: I have no further questions.

18 MR. RUHNKE: Could we take our afternoon break, Your
19 Honor?

20 THE COURT: Yes. Let's take a five, six minute
21 recess.

22 (At 3:44 PM, recess taken.)

23 (At 3:59 PM, proceedings reconvened.)

24 THE COURT: We're going to mark the transcripts as a
25 court exhibit. It doesn't go to the jury, of course.

1 MR. RUHNKE: Thank you, Your Honor. Your Honor, can
2 I flag another issue that's coming up?

3 THE COURT: Yes.

4 MR. RUHNKE: Apparently the next person to testify
5 will be the woman who lost her child at La Tombola. I had
6 asked yesterday whether the Government was going to use any
7 photographs. They weren't sure yesterday. Now I'm told they
8 want to use a photograph of the dead baby in a casket, and we
9 just think that's over the top.

10 THE COURT: I really don't want to allow this. I
11 don't even want to look at it myself. When we get to the
12 autopsy, we'll deal with it, but not now. I don't want to see
13 a baby in a casket.

14 COURT SECURITY OFFICER: All rise.

15 (At 4:01 PM, jury entered courtroom.)

16 COURT SECURITY OFFICER: Please be seated.

17 THE COURT: Any cross, Mr. Rebollo, please?

18 MR. REBOLLO: Yes, your Honor. Thank you. May it
19 please the Court.

20 THE COURT: Please.

21 CROSS-EXAMINATION

22 BY MR. REBOLLO:

23 Q. Ma'am, you and I had a chance to meet in person. Let me
24 start again. Ma'am, you and I had a chance to meet in person
25 once before; is that correct?

1 A. Yes.

2 Q. And that's because you were kind enough to come to my
3 office to talk about the facts that you have discussed with
4 the jury today?

5 A. Yes. It was not inconvenient at all for me to cooperate.

6 Q. Right. In fact, you came voluntarily to my office here
7 in Capital Center across from this courthouse, correct?

8 A. Yes.

9 Q. And we discussed everything that you remembered about the
10 events?

11 A. Yes.

12 Q. Present there was also the investigator, the private
13 investigator assigned to the case, Mr. Carlos Eliezer. Do you
14 remember that?

15 A. Yes.

16 Q. All right. And among the things we discussed were that
17 you told me that you had known Alexis since he was 12 or 13
18 years of age?

19 A. Yes, we were all young at the time.

20 Q. And you told me that you had not seen Alexis anywhere in
21 or around La Tombola on October 17 of 2009 at any time. Do
22 you remember that?

23 A. Yes, the same thing I said now.

24 Q. Right. And that is still true today?

25 A. Yes.

1 Q. It's not that you're afraid to say it, it's that you
2 really didn't see him that night at all?

3 A. Can I speak?

4 Q. Yes, of course.

5 A. I'm here present in this case testifying and I'm afraid
6 for my safety, because I had -- it's clear to me that the
7 people I'm testifying about here today are people from the
8 underworld. And still I have now identified a gentleman here,
9 and I'm risking my life doing this. But I can't testify I saw
10 Alexis Candelario, because I didn't see him.

11 Q. Fair enough. Now, we -- do you remember that at the time
12 that we met in my office it was on November of 2011? More or
13 less? Do you remember that?

14 A. I've had so many interviews that I don't remember the
15 date.

16 Q. But if it was in November 2011, it would have been well
17 over a year from before today, right?

18 A. Yes.

19 Q. All right. And another of the things that we discussed
20 was that you had been interviewed by both state and Federal
21 authorities on a number of occasions by that time, right?

22 A. Yes.

23 Q. And you had told them in detail everything you remember
24 seeing that night?

25 THE INTERPRETER: The interpreter needs a

1 repetition.

2 BY MR. REBOLLO:

3 Q. And that you told them in detail everything you remember
4 seeing that night?

5 A. Yes.

6 Q. And you made clear to them that you had not seen Alexis
7 there that night?

8 A. I've said that from the very beginning.

9 Q. You also advised me that the Federal or the state agents
10 had never shown you a picture of Alexis, right?

11 A. Could you repeat the question?

12 Q. Certainly. That you also told me that you had never been
13 shown a photograph of Alexis by the Federal or state
14 authorities?

15 A. No.

16 Q. But you didn't need one because you know Alexis, you've
17 known him for almost 30 years, right?

18 A. That's right.

19 Q. All right. And the other thing, among the other things
20 we discussed, was that you had seen the face of an individual
21 that night, that October 17, 2009 night, who was carrying a
22 long weapon?

23 A. Yes.

24 Q. And you told me, my office, back in November of 2011,
25 that you could not identify that person in any way?

1 A. Excuse me?

2 Q. The question is do you remember that you told me, in my
3 office, that the person that you had seen the face of with the
4 long weapon, you could not identify? You could not tell
5 anybody who he was?

6 A. From the very moment these events took place, I saw the
7 person who shot at me, toward me. But I never -- and I never
8 told anybody, except for the Feds, that I had seen him, and I
9 repeat, I fear for my life.

10 Q. All right. But let me try to get back to the question so
11 we can be specific. The question was that you told me in that
12 meeting in my office that that person that you had seen, you
13 could not identify, you did know who he was?

14 A. Yes.

15 Q. And one of the things we did was when you told me that
16 day, we put it down in a peace of paper. Do you remember
17 that?

18 A. Yes.

19 Q. And I gave you the chance then to review the document,
20 which said all these things? Do you remember that?

21 A. (No audible response.)

22 Q. And I gave you a chance to make any changes to it that
23 you thought were applicable?

24 A. I think so. I can't remember very well.

25 Q. Okay. Do you remember that then we went before an

1 attorney, and notary public, and you swore to that document,
2 you put an oath to that document as true and accurate?

3 A. Yes, that I had not seen Alexis, yes.

4 Q. And what about the part that you could not identify the
5 person you had seen? Do you remember that part?

6 A. No.

7 Q. All right. Now, among other of the things that we
8 discussed was the contacts that you had had with Yanet
9 Martinez and Neida Martinez Santana, Rufo's cousins. Do you
10 remember that?

11 A. Yes, about Yanet Martinez and Neida Martinez, yes.

12 Q. Earlier today you told the jury that the night of the
13 events, you had received a call from Yanet Martinez who had
14 asked you to say that you had seen Alexis at the Tombola. Do
15 you remember that?

16 A. She told me to say the truth, that I had seen Alexis.

17 Q. But that wasn't the truth, right?

18 A. I didn't see him.

19 Q. So she was asking you, in effect, to lie?

20 A. The thing is that she had read something in the
21 newspapers about Rufo identifying him, and to this day, three,
22 more than three years later, she still thinks I'm covering up
23 for Alexis Candelario.

24 Q. But the question was that in effect by asking you to say
25 falsely that you had seen Alexis there, she was asking you to

1 lie? And you wouldn't lie?

2 MS. DOMINGUEZ: Your Honor, I object to the question
3 based on the precedent that's been introduced that the witness
4 actually asked her to tell the truth and thought that that was
5 the truth.

6 THE COURT: Well, she has told us, she has explained
7 the circumstances of the situation whereby this woman reads a
8 paper and says whatever. And she has told us what she did or
9 did not do. I think we should leave it at that.

10 MR. REBOLLO: All right. Yes, sir.

11 THE COURT: Yes. Go ahead.

12 BY MR. REBOLLO:

13 Q. Now, ma'am, that was not the only time, that night of La
14 Tombola, that was not the only time that Yanet Martinez had
15 asked you to say falsely that you had seen Alexis at La
16 Tombola, right?

17 A. Several times.

18 Q. Okay. In fact, you told me at that meeting we had in my
19 office, you told me that that had happened very frequently,
20 since the day of La Tombola, she was continuously asking you
21 to say falsely that you had seen Alexis that night?

22 MS. DOMINGUEZ: Again, Your Honor, same objection.

23 THE COURT: Well, I think that she has admitted that
24 the woman asked her.

25 MR. REBOLLO: But this --

1 THE COURT: Subsequently. Subsequently and several
2 times.

3 MR. REBOLLO: The frequency.

4 THE COURT: Yes.

5 MS. DOMINGUEZ: It's the falsity, because it requires
6 her to speculate on the intent of Yanet.

7 THE COURT: I will allow that. I will allow that.

8 MR. REBOLLO: Okay.

9 THE WITNESS: Which was the question?

10 BY MR. REBOLLO:

11 Q. The question was that, in fact, since the day of the
12 events, Yanet -- you told me that Yanet Martinez had
13 continuously been asking you to say that you had seen Alexis
14 at La Tombola that night?

15 A. The first weeks it was very continuous, and our
16 relationship as friends since that date on has changed.

17 Q. Because you don't feel comfortable with this pressure put
18 on you to say something you know is not true?

19 A. It's not so much because of that. It's just that I used
20 to visit her every day from the morning to the afternoon, and
21 ever since this happened, our friendship has been put to the
22 side somewhat because to this day she still thinks that I'm
23 covering up for Alexis, because I have heard comments from
24 other people that it was Alexis -- correction to the
25 translation. Because of comments she heard from other people,

1 that Alexis committed these acts.

2 Q. And not only has Yanet done this to you, but her sister,
3 Neida Martinez Santana has done the same, albeit to a lesser
4 degree?

5 A. Neida did this like once.

6 Q. All right. And you had told them both no, you had
7 rejected those requests, right?

8 A. Whenever we've touched upon this topic, I tell them. I
9 said I didn't see him. I can't say otherwise. I didn't see
10 him. But they don't believe that.

11 Q. And you've told them both the same. You've told them as
12 you've related to me, you've told them whatever problems they
13 have among their family, that's their problem and you don't
14 want to get involved?

15 A. Yes. This is a family problem. Rufo, Alexis, Yanet,
16 Neida, all of them are family. They're all cousins and they
17 were all raised to together. First cousins. And they were
18 raised together.

19 Q. And the other thing that Yanet Martinez has told you as
20 you related to me was that if she had been at La Tombola, she
21 would say that she had seen Alexis, but the reason she doesn't
22 do it is that since she was not there, nobody's going to
23 believe her, but you were there, you can do it. Right?

24 A. Yes.

25 Q. All right. And --

1 MR. REBOLLO: Excuse me. Court's indulgence, Your
2 Honor.

3 Your Honor, for identification purposes I would like
4 this marked, if I can.

5 THE COURT: Defendant's One.

6 COURTROOM DEPUTY: One, yes.

7 THE COURT: Defendant Candelario One.

8 MR. RUHNKE: We actually have them premarked starting
9 at 100 since we used exhibit numbers earlier.

10 THE COURT: We use exhibit numbers on both sides. So
11 it will be Defendant's One, Defendant Candelario's One.

12 BY MR. REBOLLO:

13 Q. Ma'am, I'm going to hand you what's been marked as
14 Defendant's ID One. I want you to go to the second page and
15 tell me if this is your signature on this?

16 A. Yes.

17 Q. That is your signature, right, no doubt?

18 A. Yes, that's my signature.

19 MR. REBOLLO: Your Honor, I would offer Defendant's
20 ID One into evidence at this point.

21 MS. DOMINGUEZ: We have a hearsay objection.

22 THE COURT: May I see it, please?

23 MR. REBOLLO: We have a translation, also.

24 THE COURT: That's okay. Let me take a look at it.

25 Please approach the side bar.

1 (Bench conference held.)

2 THE COURT: She has basically stated almost exactly
3 what it says here.

4 MS. DOMINGUEZ: That's the basis of our objection.
5 It's not inconsistent with her testimony.

6 THE COURT: Well, it's not inconsistent. It's not
7 inconsistent. The fact that it's not inconsistent makes it
8 inadmissible?

9 MR. HEGYI: Yes, because a prior inconsistent
10 statement is hearsay.

11 MR. RUHNKE: It was sworn.

12 THE COURT: She said almost exactly this.

13 MR. REBOLLO: Except one point which I think
14 Mr. Aguayo would touch on.

15 THE COURT: Well, let him deal with it first, because
16 she hasn't been inconsistent with this at all. She said
17 exactly, I said it. Which point?

18 MR. RUHNKE: Number seven, Your Honor.

19 THE COURT: Which she admitted it, too.

20 MR. REBOLLO: She identified his client as the person
21 she saw.

22 THE COURT: Right.

23 MR. REBOLLO: But here she says --

24 THE COURT: Right, but you're not his attorney.

25 MR. REBOLLO: Exactly.

1 THE COURT: What she testified is totally consistent
2 with the sworn statement, so let's leave it at that, okay?

3 MR. REBOLLO: Very well.

4 (Bench conference concluded.)

5 THE COURT: Is there anything else for her?

6 MR. REBOLLO: I just have two more.

7 THE COURT: Yes, please.

8 MR. REBOLLO: May I, Judge?

9 BY MR. REBOLLO:

10 Q. Ma'am, just two more things. You told us that you
11 returned after the events and after the shooters had left.
12 You told us that you returned to the Tombola area, and that's
13 where you got into the ambulance that took you to the
14 hospital. Do you remember that?

15 A. Yes.

16 Q. Do you remember also telling me that you had -- when you
17 returned, before you got into the ambulance, when you
18 returned, you had seen some weapons, some firearms laying on
19 the ground among the bodies there?

20 A. Yes.

21 Q. All right. So that is true, right? You saw firearms
22 laying around right before you got into the ambulance?

23 A. As I was -- as I was running, I saw like a type of pistol
24 or something like that next to the -- close to the gate.

25 Q. All right. And finally, could you tell us the names of

1 the people you remember seeing there that night? Not the
2 people who arrived, the people who were there at the activity
3 while you were there with your friends.

4 A. Okay. I was surprised by the question, because there
5 were so many people and I don't know them all.

6 Q. Understood. I just want the people you know.

7 A. There was Carmen Maria, her mother-in-law, Mary. And I'm
8 going to mention these people by nicknames, because in the
9 neighborhood, we know people by their nicknames and I don't
10 know their names very well.

11 Q. That's good enough.

12 A. Okay. So there was Mary, Rosita, Carmen Maria, Willy,
13 Nalo, Don Samuel, David, David's wife, whose name I can't
14 remember. I can't remember the name of the girl who died
15 right now very well.

16 Q. If you can't, that's okay. Give us the names you
17 remember.

18 A. Cayon, Joshi, Minie, Minie's husband, Minie's daughter.
19 I don't know their -- the people by their names. Her son, her
20 daughter. I mentioned Joshi, right?

21 Q. Yes, you did.

22 A. Countless people. And almost at the end, well, before
23 the events took place, I had gone into the establishment. I
24 went in there several times to buy us cheese sticks and buy
25 things for me. And I had not seen Rufo arrive there yet.

1 Let me see how I can say this. Rufo arrived there a
2 couple minutes before that chaos took place there. There was
3 his sister-in-law, his niece, his wife got there. Almost all
4 of them arrived at the same time.

5 Wow, there was countless people there. For me to
6 remember all their names right now, because there was also a
7 cavalcade that arrived there, a bunch of people that arrived
8 on horses there.

9 Q. Anyone else you saw in La Tombola, in the bar when you
10 went out to buy your drinks?

11 A. Minutes before the events?

12 Q. At any point.

13 A. Well, minutes before Rufo had arrived, Minie, Amarilis,
14 Amarilis, who's Rufo's wife, Pedro was there. That's Rufo's
15 brother. There was this gray haired man who was the one who
16 was at the bar at the time. Correction. Correction. Blond,
17 blond, a blond guy who was at the bar. There was Mickey, I
18 saw him on two occasions that I saw Mickey. He was also
19 helping the blondish guy who was at the bar.

20 MR. REBOLLO: That's it? All right. Thank you very
21 much, ma'am. I have nothing else, ma'am.

22 THE COURT: Mr. Aguayo, anything?

23 MR. AGUAYO: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. AGUAYO:

1 Q. Good afternoon, Ms. Maysonet.

2 A. Good afternoon.

3 Q. Before I get into further questions, when you were asked
4 by fellow counsel who were at La Tombola, you mentioned David.
5 You mentioned the name David. Who is David and his wife?

6 A. The last names or what?

7 Q. No, no. Just who is David.

8 A. David lives on Los Magos Street. Well, I should say his
9 family. He was raised there.

10 Q. Okay. Was David there? That's my question.

11 A. Yes.

12 Q. All right. Let's go back to that night. You stated that
13 you arrived at La Tombola at approximately, I believe it was
14 around 8:30, 8:45; is that correct?

15 A. Yes.

16 MR. AGUAYO: Your Honor, if we can mark this, well,
17 actually it's a stipulation between the parties. It's a
18 croquis of La Tombola.

19 MS. DOMINGUEZ: We have no objection, Judge.

20 THE COURT: Well, mark it. Mark it in evidence
21 without objection Defendant's --

22 MR. AGUAYO: Oquendo One.

23 THE COURT: Oquendo One, yes.

24 (At 4:33 PM, Defendant Oquendo Exhibit One admitted
25 into evidence.)

1 MS. DOMINGUEZ: Your Honor, I note that document has
2 some writing in Spanish. However, the Government will be
3 introducing one that has a translation.

4 THE COURT: So you'll put them together afterwards?

5 MS. DOMINGUEZ: Yes.

6 BY MR. AGUAYO:

7 Q. Now, do you have -- can you see this document?

8 A. Yes.

9 Q. Now, the Government and I have stipulated as to this
10 croquis, that this is a croquis of the area of La Tombola.
11 Can you see that?

12 A. Yes.

13 Q. Okay. And you recognize that as La Tombola, correct?
14 The area?

15 A. Yes.

16 Q. Okay. Now, going back, you see you arrived at
17 approximately I believe it was 8:30, 8:45, correct?

18 A. Yes.

19 Q. And while you were there, you went inside La Tombola on
20 various occasions to purchase beer, correct?

21 A. Not only beer, refreshments, chips, because I was with my
22 daughters.

23 Q. Okay. But as to you, you went inside on various
24 occasions to buy beer, correct?

25 A. Yes.

1 Q. Okay. And you were there from approximately 8:30, 8:45,
2 until the events of that night, which was approximately close
3 to 12:00 AM. How many times did you go in? How many of these
4 various occasions to purchase beer, how many times did you go
5 in to get beer? More or less?

6 A. How many times did I go in to buy beer?

7 Q. Yes.

8 A. (Remarks in Spanish.)

9 Q. All right. All right. But my -- I'm sorry.?

10 A. I went in several times, but not just to buy beer for
11 myself, because when we go out as a group, one person buys one
12 round and the next person buys the next round. I don't have
13 problems with alcoholism. I had addiction problems.

14 Q. All right. That's fine, ma'am. And about how many
15 rounds were bought between the group, more or less? No, no.
16 The whole group. The whole group.

17 A. About four.

18 Q. All right. Now, you stated that the shooting occurred at
19 approximately 11:58, correct?

20 A. Something like that, yes.

21 Q. All right. And prior to the shooting, you had ordered
22 food from Minie's fritura stand, correct?

23 A. (Remarks in Spanish.)

24 Q. Okay. Now looking at -- I'm sorry.

25 A. Okay. At one point I went inside the establishment to go

1 to the bathroom. And when I came out, I asked Minie what she
2 was selling, what fritters she was selling. And I went to see
3 Maria. When she told me what she wanted, I ordered it and sat
4 next to her.

5 Q. All right. Now, looking at this croquis, would you tell
6 us where the food stand was located?

7 A. Here or here.

8 Q. If you could stand up and show the ladies and gentlemen
9 of the jury.

10 A. It's easier for me over here.

11 Q. Yeah, but we can't see that.

12 THE COURT: Yes.

13 MR. AGUAYO: Oh, you can?

14 THE COURT: She can mark it with her finger.

15 BY MR. AGUAYO:

16 Q. Okay. Wonderful. If you could mark it.

17 A. Now?

18 Q. Yes. If you can mark it.

19 A. It's in like a tarp in a tent there, and there was a
20 booth.

21 THE COURT: Make a circle around the area.

22 THE WITNESS: (Witness indicated.)

23 THE COURT: Okay.

24 BY MR. AGUAYO:

25 Q. Ma'am, isn't that the billiard table inside of La

1 Tombola, or am I mistaken?

2 A. I don't know. I can't see it. Okay. It looks so small
3 here, you can't see very well. There's a house there that's a
4 residence.

5 Q. Yes.

6 A. Can I explain?

7 Q. Yes, of course.

8 A. Okay. This is La Tombola. There are two doors, and
9 there are two doors here up front. These were the only two
10 entrance doors to the establishment. Because in the back,
11 there was another entrance, but at the time it was --

12 THE INTERPRETER: Boarded up.

13 THE WITNESS: Boarded off. And this is a residence
14 here. And here in this corner here, sorry, I thought that
15 --because I thought that that was the tent that was next to
16 it. But there's a tent or a tarp and there's a table.

17 And here at this house there's a balcony, and there's
18 an entrance door around there. There are some stairs -- there
19 are some stairs here around the door that leads to this house.
20 I was here where the -- where the tent was close to the gate,
21 very close to the gate.

22 MR. AGUAYO: Can we stipulate to this?

23 MS. DOMINGUEZ: Yes.

24 THE COURT: Why don't you put them together or you
25 want to substitute?

1 MR. AGUAYO: Well, I'm going to need this, also.

2 THE COURT: Okay.

3 MR. AGUAYO: But we can stipulate the photographs
4 here, if we can.

5 THE COURT: What are those? Let me see them. Why
6 don't you mark them as joint exhibits.

7 MR. AGUAYO: That's fine.

8 THE COURT: Joint Exhibits I and II.

9 (At 4:41 PM, Joint Exhibits I and II admitted into
10 evidence.)

11 BY MR. AGUAYO:

12 Q. Now, is this -- is there a way we can take away the --
13 okay. Does this look better for you in terms of where Minie
14 had her fritura stand?

15 A. Yes.

16 Q. Okay. Now, after you ordered it, you stated -- where did
17 you go -- where did you go with Carmen Maria? Were you across
18 the street or where were you standing prior to Minie telling
19 you the frituras are ready?

20 A. Minie yelled out to me, like made signals to me to tell
21 me that the fritters were ready. I was on the other side of
22 the road in an alleyway where we had some chairs there.

23 Q. Okay. Now, there were cars in front of La Tombola, were
24 there not?

25 A. Yes.

1 Q. As a matter of fact, there were cars everywhere because
2 there were so many people that have come to La Tombola? They
3 were on both sides of the street, correct?

4 A. Repeat the question.

5 Q. All right. You had stated that there were many, many, I
6 don't know the number, but there were a multitude of people
7 both inside and outside La Tombola. Do you remember?

8 A. Cars, horses, yes, all that.

9 Q. Okay. And the cars, they were on both sides of the
10 street?

11 A. Yes.

12 Q. Okay. And there were cars in front of La Tombola,
13 correct?

14 A. You mean like blocking the entrance?

15 Q. No.

16 A. The entrance to the premises?

17 Q. That's my question. Were there cars in front of La
18 Tombola, the front entrance? The front of the bar that's
19 called La Tombola, were there cars there?

20 A. (Remarks in Spanish.)

21 Q. Of course.

22 A. Yes, but not right in front of the doors per se, no, but
23 yes, there were cars.

24 Q. And were there at least five cars in the front there?

25 A. Yes, there were several. I don't know if there were

1 five, but yes, there were several.

2 Q. And you also stated that there was a cabalgata? I'm
3 sorry. I don't know the --

4 THE INTERPRETER: Cavalcade.

5 BY MR. AGUAYO:

6 Q. Cavalcade. How many horses were in that cavalcade, if
7 you recall?

8 A. Well, I don't know. But there were a lot of people.
9 There were like -- there were children, there were more than
10 20 people, children, adults.

11 Q. What about horses? About how many horses?

12 A. Right, that's what I'm telling you.

13 Q. So about --

14 A. Yes, there were maybe like 15 or something like that,
15 because sometimes there were two people on the same horse.

16 Q. And where were the horses tied up?

17 A. Oh, I don't know where -- I mean, there were horses
18 around with their owners next to them. Like that.

19 Q. Okay. Let's put this croquis back on. Let me see if I
20 have it right here. If you're looking at La Tombola, you
21 mentioned there were at least five cars, maybe more, as shown
22 in that croquis, correct?

23 A. Looking where? I don't understand.

24 Q. Look at the croquis that's on the screen. And you see
25 these vehicles? There are at least five vehicles on the

1 screen, correct?

2 A. Yes.

3 Q. All right. And you stated that there were vehicles in
4 the front of La Tombola, near La Tombola, in front of La
5 Tombola, and there could have been more, correct?

6 A. When I say that, I'm not sure how many cars there were, I
7 mean in front of the door. But, yes, in front of where the
8 fritters were sold, there were several cars.

9 Q. Okay. Now, the horses, were they in this -- where were
10 the horses hitched up? In this area here between the house
11 and La Tombola?

12 A. Not where the fritters were. They were further.

13 Q. Can you point to where those horses were hitched up,
14 please?

15 A. (Witness indicating), like over here on this side. Well,
16 there were some on this side, and there were also others on
17 the other side.

18 MR. AGUAYO: May the record reflect, Your Honor, that
19 she's pointing to the right side of the croquis and the left
20 side of the croquis.

21 MR. HEGYI: She's pointing off the croquis.

22 MR. AGUAYO: Yeah.

23 MR. HEGYI: She's pointing to off the croquis.

24 BY MR. AGUAYO:

25 Q. Ma'am, would you please just stand up and show us where

1 the horses were tied up?

2 A. (Witness indicating). This here is a fence, and it
3 was -- and it was over to this side that the horses were close
4 to the fence. Not on this side where the house is. And there
5 were about two or three, like two tied up. The others were on
6 the street, on the road.

7 Q. Now, to the right, the street coming down, this street
8 here, ma'am, this is called Los Bravos, correct?

9 A. Yes.

10 Q. And this is Calle Progreso, correct?

11 A. Yes.

12 Q. Okay. Please. Now, you ordered the food and as I
13 understand it, Minie signals you that the food is ready,
14 correct?

15 A. Yes.

16 Q. And you crossed the street with Carmen Maria Garcia
17 Santiago?

18 A. Yes.

19 Q. I see. Now, you've stated that you felt a person behind
20 you and you turned. Do you remember saying that?

21 A. Yes. I felt somebody running behind me.

22 Q. Okay. Now, if we look at this picture of the fritura
23 stand, you would be, would I be correct in saying that you
24 would be around this area here?

25 A. I was right here.

1 Q. All right. Could you point it out on the screen so that
2 the jurors can see it, please?

3 A. (Witness indicating.)

4 Q. All right. Fine. So that would be in front of you.
5 That's Progreso, the street, correct?

6 A. Oh, excuse me. What was your question?

7 Q. If the street that's in front was Progreso Street.

8 A. You mean in front of me where I was standing at the time?

9 Q. I'm sorry. I'm referring to this street here.

10 A. Okay. Yes, yes.

11 Q. That's not Bravo Street?

12 A. (Remarks in Spanish.)

13 Q. All right.

14 A. No, Bravo Street is the one on the side.

15 Q. Now, and your testimony was that you felt somebody behind
16 you at a distance of five to six feet, so we're talking about
17 the fritura stand, Progreso Street, correct? Yes?

18 A. You mean from where I was standing?

19 Q. Yes, ma'am.

20 A. And using this yellow line on the sidewalk, more or less
21 that's where he ran.

22 Q. All right. And that sidewalk is on Progreso Street,
23 correct?

24 A. Yes.

25 Q. Okay. Now, hold on one second, please. All right. Now,

1 do you remember that you were interviewed by Federal agents on
2 February 4th, 2011?

3 A. I've been summoned so many times that I just can't --

4 Q. All right. Do you recall the name Christopher Pagan, FBI
5 Agent?

6 A. Yes, Pagan. Pagan.

7 Q. All right. And do you recall the name FBI Task Force
8 Agent Antonio Nunez Fox? Fox.

9 A. I don't -- I can't remember that one.

10 Q. All right. But you were interviewed by Federal agents,
11 correct?

12 A. Yes.

13 Q. Did you not tell them that what you saw, that you
14 observed an individual carrying a long weapon coming from Los
15 Bravos Street, which would be this street? This street here.

16 A. I can't remember having said that he was coming from Los
17 Bravos Street, because I didn't see from where he was coming.
18 He was coming from between the cars.

19 Q. Okay. So it's your testimony, just to be clear, that he
20 was on Progreso Street and not coming from Los Bravos?

21 A. When I realized this person was behind me, I didn't know
22 what area he was coming from.

23 Q. Okay. Now, let's continue. Now, you stated that you
24 felt somebody behind you, and that when you looked around,
25 that you saw a person with a black hat, a black shirt, and

1 jeans that you don't know whether they were blue or black. Do
2 you remember that?

3 A. I didn't say hat. I didn't say hat. I said cap. I said
4 a black cap, a black shirt, and the pants, I wasn't sure if
5 they were blue or black.

6 Q. Okay. It's black cap, yes?

7 A. Yes.

8 Q. Okay. Now, so you feel somebody behind you, you turn
9 around and you see a long rifle, correct?

10 A. I feel a person running. I feel a person running behind
11 me and yes, I turned around.

12 Q. All right. And you turned around and you quickly see a
13 person with a long rifle?

14 A. He was coming from the side with a long rifle. And when
15 I yelled out to my comadre, Maria, Carmen Maria, careful.
16 That's when he turned around and shot at those of us who were
17 there.

18 Q. So could you just, if you would, madam, would you please
19 just stand up and show the jurors how that happened? How you
20 turned around and came back and called Maria and what did you
21 do?

22 THE COURT: I don't think she has to do that.

23 MR. AGUAYO: All right.

24 BY MR. AGUAYO:

25 Q. My point is you turned around very quickly, you see a man

1 with a long rifle, you yell to Maria, and then you take off,
2 correct?

3 A. Yes.

4 Q. All right. So it was basically a glimpse. You turn
5 around, you see this, you're shocked, and you start taking
6 off?

7 A. Yes.

8 Q. Now, you said that the person turned around and starting
9 shooting. Approximately how many shots did you hear?

10 A. I heard countless shots because as I was running toward
11 the back of the establishment, you could hear different shots
12 and just many. I don't know how many. And screaming.

13 Q. Okay. And you were, of course, frightened? You were
14 scared?

15 A. Yes.

16 Q. You felt you might get shot?

17 A. Yes, because they were shooting -- and this might sound
18 cruel what I'm going to say, I love Carmen Maria, but I saved
19 my life.

20 Q. Okay. That's understandable, ma'am. So you basically
21 went away from the shooter, not looking at the shooter but
22 running for your life, which is normal, yes?

23 A. When I looked back and saw this person with a long rifle,
24 I yelled out careful and right then, real quickly when I
25 yelled out to my comadre, right then and there he turned

1 around. And I saw him several seconds. If I told you I
2 was -- if I told you I stood there looking at him for five
3 minutes, I'd be lying, because in a moment like this one, I
4 wasn't going to stay there looking at him.

5 Q. I appreciate your honesty. We all do.

6 Now, let's go back to -- you stated that you were
7 interviewed -- well, let's go. When you were interviewed by
8 the Federal agents and you did the exhibit concerning the
9 photos, the ID photos.

10 MS. DOMINGUEZ: 6, 7 and 8.

11 MR. AGUAYO: 6, 7, and 8. Thank you. May I?

12 BY MR. AGUAYO:

13 Q. I'm showing you these. All right. This was on February
14 4th, 2011. That's approximately one year and three months
15 after October 17th, 2009, correct?

16 A. Yes.

17 Q. Okay. Now, when you went to the interviews with these
18 agents, what did the agents tell you, if anything, concerning
19 before they showed you the photos? What, if anything, did
20 they tell you?

21 THE INTERPRETER: Before they showed you?

22 BY MR. AGUAYO:

23 Q. Before.

24 A. Well, they told me they were going to show me some
25 pictures to see if I could identify anybody that was involved

1 in La Tombola. And they showed me several pictures, not just
2 these. They showed me several pictures.

3 Q. And how many did they show you, ma'am? How many?

4 A. About 16, 18, more or less. Several, several pictures
5 they showed me.

6 Q. Photos or -- I'm sorry, or like --

7 A. On paper.

8 Q. Okay. But there were several photos that they showed
9 you, right?

10 A. Yes, several.

11 Q. Okay. Now, you, in fact, did not recognize anybody at
12 first, correct?

13 A. I don't know which interview you're talking to me about.

14 Q. I'm talking about the day that's indicated in the photo
15 array of February 4th, 2011 when you said you circled David
16 Oquendo's picture. Is that the day that the agent showed you
17 a lot of photographs or is that before?

18 A. No. They showed me several pictures. The day that I
19 identified him on one of the papers, there were several
20 pictures.

21 Q. Okay. Now, it's correct, is it not, that you did not
22 recognize the shooter at first; isn't that correct?

23 A. No, at all times I gave the description of the person.

24 Q. All right. But did -- all right. And you gave them the
25 description of the person?

1 A. Yes. I mean, from the first time I was interviewed by, I
2 call him the state authorities over there at the Bayamon
3 courthouse, that's where I provided descriptions.

4 Q. Okay. But Ms. Maysonet, I would like you to focus on
5 this particular day when you identified David Oquendo Rivas
6 and you circled his picture. I want you to focus on that day.
7 We'll talk about the local police later on, but right now,
8 please, focus on that particular day, okay?

9 Are you saying that on that particular day, before
10 you were shown these photos, that you described the person
11 that you saw to the agents?

12 THE INTERPRETER: The person or the persons? I
13 didn't hear.

14 BY MR. AGUAYO:

15 Q. Okay. Prior to being shown those photos, did she
16 describe the individual that she saw as a shooter to the
17 agents at the FBI prior to showing the photos to her?

18 A. I don't remember. I've had so many -- I can't remember.

19 Q. Do you recall in that particular day that you only told
20 them, I saw a person with long blue jeans, a black shirt and a
21 black baseball cap, and didn't say anything about how
22 physically they looked?

23 A. I don't remember.

24 Q. Okay. Now, is it correct that you did not recognize the
25 shooter from those pictures, the first ones they showed you?

1 A. That were presented by who?

2 Q. All right. Again, please focus, madam. On the day that
3 you marked and circled that photo array, okay? I'd just like
4 you, please, just to focus on that.

5 A. Okay.

6 Q. Now I forgot the question.

7 MS. DOMINGUEZ: You weren't able to identify.

8 MR. AGUAYO: I'm sorry. What was the question?

9 MS. DOMINGUEZ: You weren't able to identify the
10 shooter.

11 MR. AGUAYO: Thank you.

12 BY MR. AGUAYO:

13 Q. On that particular day, when they showed you these
14 photos, you were not able to recognize the photo of David
15 Oquendo or of anyone, for that matter? When they first showed
16 you that photo array?

17 A. I identified him.

18 Q. Okay. So it would be -- okay. I just want to be clear
19 on this. That you did not say to the agents that you could
20 not recognize anybody in those photos; is that correct? That
21 you never said that to the agent?

22 A. When they showed me these pictures?

23 Q. When they showed you those photos, yes.

24 A. I quickly identified him.

25 Q. You quickly identified him?

1 A. I really didn't know, I didn't know if this person -- I
2 didn't know if this person -- if this person was a friend or
3 in any way related to Alexis. I didn't know that. I
4 recognized this person as the person I saw the day of the
5 events. I won't forget that face.

6 Q. That's fine. That's fine. But I'm asking you, is it
7 correct or not that you first said that you did not recognize
8 any photo there of the shooter? That's all I'm asking, ma'am.

9 A. I don't remember.

10 Q. And then they showed you some bigger photos, if you
11 recall, and that's when you recognize David Oquendo?

12 A. This is the first picture of him that they showed me.
13 And I stayed looking at the picture.

14 THE COURT: Exhibit number?

15 MS. DOMINGUEZ: I believe it's Number Seven.

16 THE COURT: Seven.

17 MR. AGUAYO: Seven, Your Honor.

18 THE COURT: What is the number?

19 THE INTERPRETER: Eight.

20 THE COURT: Eight.

21 THE WITNESS: So they showed me a series of pictures,
22 and when I saw this picture, when I saw this picture, they
23 showed this picture to me, I stayed looking at it, because
24 this was the person I saw on the day of the events.

25 MS. DOMINGUEZ: Your Honor, if the translation could

1 accurately reflect that she pointed to the photo of David
2 Oquendo.

3 THE COURT: The thing is she was shown two photo
4 arrays at least.

5 MR. AGUAYO: Two.

6 THE COURT: And we're mixing them. We should go one
7 by one. This photo array, did you identify someone? This
8 photo array, did you identify them? If we mix them --

9 MR. AGUAYO: No problem, Your Honor. No problem.
10 May I approach?

11 THE COURT: Okay.

12 BY MR. AGUAYO:

13 Q. Ms. Maysonet, let me put this here. They showed you this
14 photo array, correct?

15 THE INTERPRETER: What?

16 BY MR. AGUAYO:

17 Q. They showed you this photo array?

18 A. And along with this one, two or three more, yes.

19 Q. But let's concentrate on this one for now, please.

20 A. Okay.

21 Q. They showed you this photo array, correct?

22 A. Yes.

23 Q. Okay. And at the time that you saw this photo array, you
24 stated to them that you could not recognize the shooter,
25 correct?

1 A. I don't remember that.

2 Q. Okay. And then subsequent they showed you these bigger
3 photos, and that's where you said it was David Oquendo,
4 correct?

5 A. (Remarks in Spanish.)

6 Q. This one here, ma'am?

7 A. When they showed me the previous pictures --

8 Q. That would be this one, Exhibit Eight?

9 A. I asked them. I focused on his picture, because I
10 recognized him on the spot. And I asked them, I asked them if
11 they could do me the favor of making this picture larger.

12 Q. Okay. And then --

13 A. And then they brought another picture of him, this same
14 person, but with other people.

15 Q. All right. And is this --

16 A. And there again, I identified him.

17 Q. And you also told them that you recognized the shooter
18 when you saw his picture in the newspaper after he was
19 arrested in October of 2009? You said that to the agent, did
20 you not?

21 A. When I saw the picture, the photograph, I told them that
22 I had seen that person before.

23 Q. Did you tell them that you saw, recognized the shooter,
24 when you saw his picture in a newspaper after he was arrested
25 in October of 2009?

1 A. Ask the question again.

2 Q. All right. You told them that you recognized the shooter
3 as being David Oquendo Rivas when you saw a picture in the
4 newspaper after he was arrested in October of 2009?

5 A. Yes.

6 Q. Okay. Now, let's go back to -- do you recall what
7 newspaper you saw that in?

8 A. No.

9 Q. All right. At that time I believe that there was El
10 Nuevo Dia, correct?

11 A. I can't remember, because this was in all the newspapers.

12 Q. His photo was in all the newspapers after his arrest,
13 that's what you're saying?

14 A. No. I know that it was in one newspaper, but right now I
15 can't tell you which newspaper it was.

16 Q. Okay. Do you recall, if I'm correct, that the newspapers
17 that existed for that time, was El Nuevo Dia, Primera Hora and
18 El Vocero?

19 A. Yes.

20 Q. Okay. Now, let's go back to when you were interviewed by
21 the local police. Did you -- you said that they showed you a
22 binder of photographs, many photographs.

23 A. That's right.

24 Q. Okay. And that you couldn't find -- and that this
25 occurred, let's see now, that this occurred several weeks

1 after Carmen Maria was discharged from the hospital. Do you
2 remember saying that?

3 A. (Remarks in Spanish.)

4 Q. Okay. So you went --

5 A. Yes. And they had actually given me a citation before
6 Carmen Maria was discharged from the hospital, but since I was
7 the one in charge of Carmen Maria, of visiting her at noon and
8 all that, they decided to wait and give us a citation to both
9 of us at the same time.

10 Q. Okay. But that was -- so you actually were interviewed
11 by the local police several weeks after Carmen Maria was
12 discharged, yes?

13 A. Yes.

14 Q. So would that -- I'm sorry. Would that have been in
15 November, the early part of November, middle part of November
16 of 2009?

17 A. More or less. I don't remember the date, but more or
18 less, yes.

19 Q. Okay. Now, when you went to the local police and they
20 showed you this binder of many, many, many, many pictures that
21 you looked through, you did not recognize any of them?

22 A. No, because he wasn't there.

23 Q. Okay. Did you tell the local police, listen, we don't
24 have to look any further? I saw his picture in the newspaper?
25 Let's go get the newspaper?

1 A. But the picture I saw after.

2 Q. The picture in the newspaper you saw after November?

3 A. I think so.

4 Q. You stated that you saw the picture after David Oquendo
5 was arrested in October of 2009. He was arrested on -- I'm
6 sorry; is that correct?

7 A. I didn't understand the question very well.

8 Q. All right. You stated to the agents that you recognized
9 the shooter when you saw his picture in the newspaper after he
10 was arrested in October of 2009?

11 A. No.

12 Q. You didn't tell that to the agent?

13 A. No.

14 Q. Do you realize he was arrested in October --

15 A. I identified him first. And after I identified him,
16 that's when I realized that he was in the newspaper. And I
17 called the officer and told him, he's in the newspaper.

18 Q. This officer would be the Federal agents?

19 A. No, no, no, because you told me we were talking about the
20 ones from Bayamon.

21 Q. All right. That's fine. My question to you, madam --
22 all right. Let's see if I have this straight. You're taken
23 to the police station and you're asked to look at binders full
24 of pictures, correct?

25 A. Yes.

1 Q. And you don't recognize any of them?

2 A. Okay. I looked over the book. And at one point I stayed
3 looking at one picture, and he asked me why I was observing
4 this picture so much. And I told him, because this gentleman
5 here looks a lot --

6 THE INTERPRETER: Too much to him.

7 THE WITNESS: -- like the person who shot at me. And
8 he asked me, is that him? Can you identify him? And I said,
9 no, no. I said he fits all the descriptions, but the guy I
10 saw was white.

11 BY MR. AGUAYO:

12 Q. All right. Let's go back to the interview with the
13 Federal -- when you had that interview, when you circled a
14 picture of David, okay? Let's put your mind back in February
15 of 2011, if you will, please.

16 A. Okay.

17 Q. Did you or did you not tell the agent that you recognize
18 the shooter, in other words, David Oquendo, when you saw his
19 picture in the newspaper after he was arrested in October of
20 2009? Did or did you not say that to him?

21 A. I identified him first, and then I told him, I had seen
22 his picture in the newspaper. When this happened, when all
23 this at La Tombola happened, I barely even looked at
24 newspapers. This is something that I experienced. I know
25 what happened there.

1 And when I found out, after I had identified him,
2 after I had -- after I had already identified him, I found
3 out, I was told that he was one of the arrestees, one of the
4 people arrested. A couple days after I had identified him.
5 That's when I decided to pick up a newspaper, to look through
6 it to see if it was true that he was in there. And yes, he
7 was there.

8 Q. All right. So just to be clear, on that date that you
9 identified David Oquendo, on February 4th of 2011, all you did
10 was identify him. And then subsequently you read the
11 newspaper and you see his picture. Is that what you're
12 testifying to?

13 A. Yes, it was in the newspapers.

14 Q. All right. But that's --

15 A. And on the internet.

16 Q. All right. But, please, madam, my question, please focus
17 on my question. My question is that particular day you
18 identified him, subsequently, subsequently after you
19 identified him, a date subsequent to that interview, you see
20 his picture in the newspaper and that's when you realize that
21 it's him? That you recognize him? I just want to be clear.

22 Are you telling me, are you telling us, the jury
23 here, that you first identify him, and then subsequent to the
24 identification is when you see his picture and you recognize
25 him as the shooter when you see him in the newspaper? Is that

1 | what you're saying?

2 | A. Look, Counselor, I identified him, and after I identified
3 | him, I found out that the person I had identified was one of
4 | the people arrested.

5 | Q. Okay.

6 | A. He was one of the people arrested, but it's my
7 | understanding he was not arrested at the same time Alexis was,
8 | when they caught Alexis' group. He was arrested and he was
9 | with other people at the time. I don't know who.

10 | Q. Go ahead and interpret.

11 | A. And they were transporting him in the vehicle, according
12 | to the newspapers, firearms that were related to the La
13 | Tombola massacre.

14 | Q. Okay, ma'am. That's fine. I'll ask you one more time,
15 | and then I won't ask you again.

16 | THE COURT: You've asked her plenty of times. How
17 | many times are you going to ask the same story? I understood
18 | it this way, that she identified him with the agents.
19 | Subsequently she saw the man in the paper. That's what she
20 | said.

21 | MR. AGUAYO: And she did not tell the agent on this
22 | particular day.

23 | THE COURT: I wasn't there. I can't tell you.

24 | MR. AGUAYO: That's what I want to pin down.

25 | THE COURT: You haven't asked her.

1 BY MR. AGUAYO:

2 Q. Did you or did you not on the date that you identified
3 David Oquendo in that photo array, did you or did you not on
4 that particular day tell the agent that you recognized the
5 shooter when you saw his picture in the newspaper after he was
6 arrested in October of 2009? Yes or no?

7 A. No.

8 MR. AGUAYO: Thank you. That will be all, Your
9 Honor.

10 THE COURT: Thank you very much. Anything else?

11 MS. DOMINGUEZ: No redirect, Your Honor.

12 THE COURT: No redirect. Thank you very much, ma'am.
13 You are excused.

14 (At 5:29 PM, witness excused.)

15 THE COURT: We should call somebody else before we
16 leave. Is that okay with you, jurors?

17 MS. DOMINGUEZ: This will be a fairly short witness,
18 Judge.

19 THE COURT: Go ahead.

20 MS. DOMINGUEZ: Carmen Maria Garcia Santiago.

21 (At 5:31 PM, witness took the stand.)

22 COURTROOM DEPUTY: Please raise your right hand.

23 Do you solemnly swear that the testimony you are
24 about to give in this case is the truth, the whole truth, and
25 nothing but the truth, so help you God?

1 THE WITNESS: Yes, I do.

2 MS. DOMINGUEZ: May I proceed, Judge?

3 THE COURT: Please.

4 C A R M E N M A R I A G A R C I A S A N T I A G O,
5 called as a witness by the Government, having been sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. DOMINGUEZ:

9 Q. Please state your full name.

10 A. Carmen Garcia Santiago.

11 Q. Do you have any children?

12 A. Yes.

13 Q. How many?

14 A. Four, and one I lost.

15 Q. And what do you do for a living?

16 A. Homemaker.

17 Q. Now, on October the 17, 2009, ma'am, where did you live?

18 A. Sabana Seca.

19 Q. I'm sorry. Could you --

20 A. Sabana Seca.

21 Q. -- get up a little closer to the microphone? Okay. And
22 how long had you been living in Sabana Seca?

23 A. My whole life.

24 Q. And who did you live with?

25 A. At the time, my mother-in-law's.

1 Q. And were you familiar with a pub called La Tombola?

2 A. Yes.

3 Q. And where was that pub in relation to where you lived at
4 your mother-in-law's house?

5 A. There's an alleyway in front of the road.

6 Q. So it would be across the street?

7 A. Yes.

8 Q. And on October 17, 2009, did you visit La Tombola?

9 A. I only went there to buy and where the fritters were
10 sold.

11 Q. Okay. And the frituras were being sold where in relation
12 to the pub?

13 A. Outside.

14 Q. But was it nextdoor to the business or somewhere further?

15 A. Right next to it.

16 Q. And why did you visit the pub that evening?

17 A. I was just there looking at the movement of the music,
18 but I wasn't there partying. I was pregnant.

19 Q. And was there any particular event that was taking place
20 at La Tombola that evening?

21 A. The -- the opening of this place.

22 Q. Okay. And do you recall approximately what time you
23 arrived?

24 A. Around 8:00 PM.

25 Q. And did you go alone or was someone with you?

1 A. No. I was with my comadre, my child's godmother in
2 front.

3 Q. And who was your child's godmother?

4 A. Jannette Maysonet.

5 Q. And when you arrived that evening, approximately how many
6 people were there? And when I say there, I'm referring to the
7 outside area where you were.

8 A. About 30 people approximately.

9 Q. Did you go inside the business or did you remain outside
10 through the night?

11 A. I went in, but I just bought a soda and came right back
12 out quickly.

13 Q. And do you remember approximately how long after you
14 arrived you went back in?

15 A. Around 8:30.

16 Q. And at that time, could you tell us approximately how
17 many people were inside?

18 A. Maybe 40, 50 people.

19 Q. And at approximately 11:30 that night, were you still in
20 the outside area of La Tombola?

21 A. Yes.

22 Q. And what were you doing at that time?

23 A. I crossed over to order a shrimp turnover, and then I
24 went back to where I was sitting to wait until the turnover
25 was cooked.

1 Q. And was Jannette still with you or was she somewhere
2 else?

3 A. Yes, she came with me.

4 Q. Okay. And at that time, around 11:30 when you ordered
5 the turnover or the pastelillo, could you tell us
6 approximately how many people you observed in the outside
7 area?

8 A. There were quite a lot.

9 Q. Okay. Are you able to put a number, more or less than 50
10 people?

11 A. Outside, I think there were around 40, 50 people.

12 Q. And did you eventually get up to retrieve your empenada?
13 And did Jannette go with you or did she stay behind?

14 A. She came with me.

15 Q. And tell us what happened.

16 A. There, when Carmen Sempritt was giving us the turnover and
17 I was paying her, and then at that point my comadre, Jannette,
18 told me, run, they're shooting.

19 Q. And were you able to observe what she did when she told
20 you this?

21 A. She looked, but then she ran off. She kept running and I
22 ran behind her.

23 Q. And she was in front of you? You were running behind
24 her? What happened to you?

25 A. I received a shot in my left gluteus, fell on my knees.

1 And I got up, and at that point I ran into Omaris Fonseca, a
2 nine year old girl, and we stayed in back of the establishment
3 in part taking cover behind the establishment.

4 Q. Now, was Omaris -- had she been injured that you could
5 tell? Omaris.

6 A. In the thigh.

7 Q. Now, Carmen Marie, before you ran in back to take cover
8 with Omaris, can you tell me whether you had occasion to see
9 any of the shooters?

10 A. No.

11 Q. You have to answer verbally.

12 A. I did not have the opportunity to see anybody.

13 Q. You did not see anybody firing?

14 A. No. No. I mean, they were like, the people who were
15 coming over, but I didn't get to see their physical
16 appearance.

17 Q. Okay. Let's take this by steps. The first thing I want
18 to establish is whether you had occasion to see anyone firing.
19 I'm not asking you at this point whether you were able to
20 identify their face, but were you able to see anyone firing?

21 A. (Nodding head up and down.)

22 Q. Or carrying a weapon?

23 A. Yes.

24 Q. Tell us what you saw.

25 A. Like three people walking with long rifles.

1 Q. And at what point in this chronology, did you actually
2 see them?

3 A. What do you mean, chronology?

4 THE COURT: Before or after being shot, you saw them?

5 THE WITNESS: Before.

6 BY MS. DOMINGUEZ:

7 Q. And was it before or after you began running to the back
8 of the building?

9 A. Repeat the question.

10 Q. When you saw these three armed men, had you already
11 started running to the back of the building? Yes or no?

12 A. No.

13 Q. Okay. And when you saw these men, do you know where
14 Jannette was?

15 A. Jannette had already run.

16 Q. Now, could you tell us, understanding your testimony that
17 you could not identify their faces, could you tell us how
18 these people appeared to you? What you were able to observe?

19 A. It's just that this happened so quickly that what I was
20 doing was protecting my life.

21 Q. I understand that. And you indicated there were three
22 individuals; is that correct?

23 A. Yes.

24 Q. Were you able to observe generally how they were dressed?

25 A. No. I don't remember.

1 Q. Were you able to see what weapons, if any, they were
2 carrying?

3 A. Long rifles.

4 THE INTERPRETER: Weapons.

5 THE WITNESS: Weapons.

6 BY MS. DOMINGUEZ:

7 Q. And did you see them simply carrying the weapons or did
8 you see them actually firing the weapons?

9 A. By the time Jannette told me run, they were shooting.

10 Q. Okay. Now, when you went back to the back side of the
11 building with the nine year old girl, what did you do?

12 A. (Remarks in Spanish.)

13 Q. And from where you were -- oh, I'm sorry.

14 A. I stayed there and I called 911. And they asked me
15 several questions. And I answered and said I was pregnant and
16 wounded. And I stayed there until they arrived and the girl
17 said that I was back there.

18 Q. Now, from where you were hiding with Omaris, could you
19 tell us whether you were able to hear what was going on at La
20 Tombola?

21 A. A lot of screaming by the people who were inside and,
22 well, the shots.

23 Q. And are you able to place a number on the shots that you
24 heard while you were in the back part of the building?

25 A. Several, many.

1 Q. Well, several, more than ten?

2 A. Yes.

3 Q. More than 50?

4 A. (Nodding head up and down), yes.

5 Q. More than a hundred?

6 A. I don't know.

7 Q. But a lot?

8 A. But there were a lot.

9 Q. And the shots that you were hearing, were they in close
10 succession or were there pauses inbetween them?

11 A. There were pauses.

12 Q. And when you heard shots, one after the other, were they
13 in close succession between pauses or were there pauses
14 between every shot? Let me rephrase.

15 THE INTERPRETER: Interpreter needs a repetition of
16 the question.

17 BY MS. DOMINGUEZ:

18 Q. Understanding your testimony that there were pauses, in
19 the time there were not pauses and shots were being fired, can
20 you tell us whether the shots were being fired in close
21 succession one after another or one shot, pause, one shot,
22 pause?

23 A. No, it was in a row.

24 Q. Now, how long did the shots last?

25 A. About four or five minutes.

1 Q. And what happened when the shots finally stopped?

2 A. Well, by then the police arrived, the ambulance.

3 Q. And what happened with you?

4 A. Well, at that point, the girl Omaris told a police
5 officer that I was there, but then the police officer took
6 her. And at that point the father of my children comes out,
7 because he had been at the house with my kids. And he found
8 me in the back and took me out to where the ambulances were.
9 From there I was taken to the hospital.

10 Q. And did anyone accompany you in the ambulance?

11 A. Yes.

12 Q. Who?

13 A. Jannette Maysonet.

14 Q. You know, Carmen Maria, let me ask you, as a result of
15 the injuries that you have told us about, that you sustained
16 on that evening of October 17, 2009, did anything happen to
17 your baby?

18 A. The bullet came in through my gluteus and reached the
19 uterus and bladder. Uterus, bladder, and intestines. And it
20 reached the baby's head, came down to the pallet, and became
21 embedded in her little hand.

22 Q. And as a result of those injuries, did your baby die?

23 A. Yes.

24 Q. How many months were you pregnant at the time of those
25 injuries?

1 A. Eight months.

2 Q. And what about you? Tell us about the injuries you
3 sustained.

4 A. Well, they opened me to reconstruct my uterus, bladder
5 and intestines. I was at the hospital for five days. And
6 then three months of recovery.

7 Q. Now, let me ask you, Carmen Maria, did you name your
8 baby?

9 A. Yes. Yes.

10 Q. What was her name?

11 A. Daneshka Rios Garcia.

12 MS. DOMINGUEZ: I have nothing further.

13 THE COURT: Any cross?

14 MR. AGUAYO: Not from me, Your Honor.

15 MR. REBOLLO: Just a few, Judge. May it please the
16 Court.

17 THE COURT: Please.

18 CROSS-EXAMINATION

19 BY MR. REBOLLO:

20 Q. Ma'am, you told us you were a lifelong resident of Sabana
21 Seca; is that correct?

22 A. Yes.

23 Q. Okay. You know Alexis from growing up in that area?

24 A. I did not grow up with him.

25 Q. But you know him from the area? You were both residents

1 of that area?

2 A. Yes.

3 Q. That night, you didn't see him there at La Tombola,
4 right?

5 A. I didn't see him.

6 Q. Okay. You mentioned that you had seen three individuals
7 with long weapons, with firearms, correct?

8 A. Yes.

9 Q. Okay. Do you remember that -- today you don't remember
10 the description of the individuals, you told us that earlier,
11 right?

12 A. No, I don't.

13 Q. Do you remember that when you spoke to FBI agents, you at
14 that point, you had it more fresh in your mind and you were
15 able to give the description of at least one of those persons?

16 A. No.

17 Q. You don't remember at all?

18 A. (Shaking head from side to side.)

19 Q. Don't remember telling them that one of the persons had
20 white skin and was wearing a light green shirt?

21 A. No.

22 MR. REBOLLO: No? Don't remember? Okay. All right.
23 Thank you. That's all I have, Judge.

24 THE COURT: Anything else?

25 MS. DOMINGUEZ: Just one question, Judge. Thank

1 you.

2 THE COURT: One question.

3 REDIRECT EXAMINATION

4 BY MS. DOMINGUEZ:

5 Q. Carmen Maria, Mr. Rebollo just asked you whether you had
6 seen Alexis there on the evening of October 17, 2009 at La
7 Tombola.

8 A. (Nodding head up and down.)

9 Q. You've already told us that the three people you saw, you
10 were not able to see their faces?

11 A. Uh-huh.

12 Q. So, in fact, you can't tell us who they were or were not?

13 A. Exactly.

14 MS. DOMINGUEZ: Nothing further.

15 THE COURT: Thank you very much. You are you now
16 excused.

17 (At 5:55 PM, witness excused.)

18 THE COURT: Well, members of the jury, I would really
19 like to start tomorrow at 8:30, if possible. Is that possible
20 for all of you?

21 THE JURORS: (Nodding heads up and down.)

22 THE COURT: Can we do it? So try to be here a few
23 minutes before that hour so that we can start promptly.
24 Remember that you are not to discuss this case with anyone, or
25 allow anybody to discuss this case with you. You cannot read

1 or listen to anything touching upon this case. Remember that.
2 No research or investigation on your own.

3 You have to keep an open mind. We're just barely
4 starting. And remember no blogging, no Googling, no internet
5 searches, nothing of that sort.

6 So with that in mind, I want to thank you for the
7 long day you gave us today, and I will see you tomorrow
8 morning hopefully. Thank you.

9 (At 5:56 PM, jury excused.)

10 MS. DOMINGUEZ: Excuse me, Your Honor, may we inquire
11 if tomorrow is a half day, so we may have witnesses ready?

12 THE COURT: We should stop tomorrow around 1:00,
13 1:30, okay?

14 MR. RUHNKE: Perfect. Thank you.

15 THE COURT: I have about three or four sentences
16 tomorrow.

17 MR. HEGYI: Your Honor, may I also explain to you,
18 the first witness we are going to start with is going to be
19 the person from the institute who was responsible for the
20 scene. That may run us the whole day. But the only way that
21 I'm able to do this is with the videos. They had to break the
22 scene up into zones, so we're going to run through them, but
23 it's going to take a while. We'll have the sound off.

24 And the other thing I wanted to alert the Court to is
25 my expectation with all of the shell casings, there's over 300

1 shell casings, that I will just have them laid out here.

2 THE COURT: Sure.

3 MR. HEGYI: To have them identified.

4 MR. AGUAYO: Your Honor, can we have daily copy
5 regarding the witnesses?

6 THE COURT: I think I already authorized that. As
7 long as Amy can do it, I have no problem with that.

8 MR. AGUAYO: All right. Thank you very much.

9 (At 5:58 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 183 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge José Antonio Fusté on February 22,
8 2013.

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12

13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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